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320-064—68——1

APPENDIX A

United States Court of Appeals for the Fourth Circuit

No. 11228

NATIONAL LABOR RELATIONS BOARD, PETITIONER

versus

GISSEL PACKING COMPANY, INC., RESPONDENT

FOOD STORE EMPLOYEES UNION, LOCAL #347, AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL–CIO, INTERVENOR

On Petition for Enforcement of an Order of the National Labor Relations Board

(Argued January 11, 1968. Decided June 28, 1968.)

Before HAYNSWORTH, Chief Judge, and BOREMAN and WINTER, Circuit Judges

Paul J. Spielberg, Attorney, National Labor Relations Board, (Arnold Ordman, General Counsel, Dominick L. Manoli, Associate General Counsel, Marcel Mallet-Prevost, Assistant General Counsel, Francis Flannery, Attorney, National Labor Relations Board, on brief) for Petitioner; C. Robert Schaub (Jenkins, Schaub & Fenstermaker on brief) for Respondent, and Albert Gore (Judith A. Lonnquist, and Jacobs and Gore on brief) for Intervenor.

PER CURIAM:

The National Labor Relations Board petitions for enforcement of its order [1] directing respondent, Gissel Packing Company, Inc. to take certain steps to remedy violations of the National Labor Relations Act [2] found by the Board to have occurred. We decline enforcement of that portion of the order directing respondent to bargain with the union upon request.

Respondent is a West Virginia corporation engaged in the slaughtering, processing, and wholesaling of beef and pork products. Amalgamated Meat Cutters and Butcher Workmen of North America, the union, attempted to organize certain of respondent's employees in 1960 and 1961. The Board directed that an election be held, but the union was defeated. About the middle of January, 1965, the union began a second campaign to organize respondent's employees, and it is out of this campaign that this controversy arises.

The Board concluded that during the 1965 campaign respondent violated Section 8(a)(1) of the Act by coercing its employees in the exercise of their rights under the Act and Section 8(a)(3) by discharging two employees because of their union membership and activity. Substantial evidence on the whole record, though not uncontradicted, exists to support these findings, and we enforce that portion of the Board's order requiring respondent to remedy these violations.

We are unable, however, to accept the Board's determination that respondent violated Sections 8(a)(5) and (1) of the Act by refusing to bargain with the union upon request, for the evidence is insufficient to support a finding that respondent did not have a good faith doubt as to the union's majority status when confronted with the demand for recognition. On

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[1] 157 NLRB No. 94.

[2] 20 U.S.C.A. § 151 *et. seq.*

January 22, 1965, union representative Spencer informed respondent that the union represented a majority of the employees in a certain unit and requested recognition, basing his claim upon possession by the anion of signed authorization cards from 31 of the 47 unit employees. Respondent replied through its agents that it doubted the union's claim, and invited Spencer to file for a Board election. The bases of its doubts were buttressed by the fact that a few years earlier the union lost a valid secret election after a similar claim of majority status.

In recent cases we have had occasion to point out that authorization cards are such unreliable indicators of the desires of the employees that an employer confronted with a demand for recognition based solely upon them is justified in withholding recognition pending the result of a certification election.[2] The reasoning elaborated in those decisions applies with equal force here, and we decline enforcement of that portion of the Board's order requiring respondent to bargain with the union.

Enforcement granted in part and denied in part.

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[2] Crawford Mfg. Co. v. NLRB, 4 Cir., 386 F. 2d 367, cert. denied 36 LW 3403, ____ U.S. ____; NLRB v. S. S. Logan Packing Co., 4 Cir., 386 F. 2d 562; NLRB v. Sehon Stevenson Co., Inc., 4 Cir., 386 F. 2d 551; NLRB v. Heck's, Inc., 4 Cir., ____ F. 2d ____ (decided this day).

APPENDIX B

United States Court of Appeals for the Fourth Circuit

No. 11228

NATIONAL LABOR RELATIONS BOARD, PETITIONER

vs.

GISSEL PACKING COMPANY, INC., RESPONDENT

FOOD STORE EMPLOYEES UNION, LOCAL 347, AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL–CIO, INTERVENOR

THIS CAUSE came on to be heard upon the petition of the National Labor Relations Board for enforcement of a certain order issued by it against Respondent, Gissel Packing Company, Inc., Huntington, West Virginia, its officers, agents, successors, and assigns on the 25th day of March, 1966, in a proceeding before the said Board known upon its records as Case Nos. 9–CA–3472 and 9–CA–3583; upon the answer of the said Respondent, and upon the certified list in lieu of a transcript of the record; and the said cause was argued by counsel.

ON CONSIDERATION WHEREOF, it is ordered, adjudged and decreed by the United States Court of Appeals for the Fourth Circuit that the said order of the National Labor Relations Board be, and it is hereby, enforced as to that portion dealing with the violations of §§ 8(a) (1) and (3) of the National Labor Relations Act, and that enforcement with regard to that portion of the order requiring respondent to bargain with the union is denied; and that the said Respond-

ent, Gissel Packing Company, Inc., its officers, agents, successors and assigns abide by and perform the directions of the Board in said order as so enforced contained, in accordance with the opinion of the Court filed herein.

(S) CLEMENT F. HAYNSWORTH, Jr.,
Chief Judge, Fourth Circuit.

[Filed: June 28, 1968, Samuel W. Phillips, Clerk.]

A True Copy, Teste: Samuel W. Phillips, Clerk.
By Margaret L. Davis.

APPENDIX C

United States of America, Before the National Labor Relations Board

Cases Nos. 9–CA–3472, 9–CA–3583

GISSEL PACKING COMPANY, INC.

and

FOOD STORE EMPLOYEES UNION, LOCAL NO. 347, AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL–CIO

DECISION AND ORDER

On December 14, 1965, Trial Examiner Rosanna A. Blake issued her Decision in the above-entitled proceeding, finding that the Respondent had engaged in and was engaging in certain unfair labor practices and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the attached Trial Examiner's Decision. Thereafter, the Respondent filed exceptions to the Trial Examiner's Decision.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its powers in connection with these cases to a three-member panel.

The Board has reviewed the rulings of the Trial Examiner made at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Trial Examiner's

Decision, the exceptions,[1] and the entire record in this proceeding, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner, with the modification noted below.[2]

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby adopts as its Order the Recommended Order of the Trial Examiner, and orders that the Respondent, Gissel Packing Company, Inc., Huntington, West Virginia, its officers, agents, successors, and assigns, shall take the action set forth in the Trial Examiner's Recommended Order.

Dated, Washington, D.C., March 25, 1966.

[SEAL] JOHN H. FANNING,
Member.
GERALD A. BROWN,
Member.
SAM ZAGORIA,
Member.
National Labor Relations Board.

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[1] The Respondent excepted to the credibility findings made by the Trial Examiner. It is the Board's established practice, however, not to overrule a Trial Examiner's resolutions with respect to credibility unless, as is not the case here, the clear preponderance of all the relevant evidence convinces us that the resolutions were incorrect. *Standard Dry Wall Products, Inc.*, 91 NLRB 544, enfd, 188 F. 2d 362 (C.A. 3).

[2] In adopting the Trial Examiner's conclusion that the Respondent violated Section 8(a)(5) of the Act, we need not rely upon her interpretation of the Supreme Court's opinion in *International Ladies' Garment Workers Union (Bernhard-Altmann Texas Corp.)* v. *N.L.R.B.*, 366 U.S. 731, as set forth in footnote 41 of the Trial Examiner's Decision.

The following inadvertences contained in the Trial Exam-

United States of America, Before the National Labor Relations Board, Division of Trial Examiners, Washington, D.C.

Case Nos. 9–CA–3472, 9–CA–3583

GISSEL PACKING COMPANY, INC.

and

FOOD STORE EMPLOYEES UNION, LOCAL #347, AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL–CIO

Jack V. Baker, Esq., for the General Counsel, *John E. Jenkins, Jr., Esq.,* Huntington, W. Va., for the Respondent, *Woodrow R. Gunnoe,* Business Representative, Charleston, W. Va., for the Charging Party.

Before: ROSANNA A. BLAKE, Trial Examiner

TRIAL EXAMINER'S DECISION

Statement of the Case

Upon charges filed on February 11 and May 12, 1965, by the Food Store Employees Union, Local #347, Amalgamated Meat Cutters and Butcher Workmen of North America, AFL–CIO, the General Counsel, acting through the Regional Director for the Ninth Region, issued complaints on March 31 and June 21, 1965. On the latter date, the Regional Director also issued an order consolidating the two cases for hearing. The complaints alleged that Respondent

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iner's Decision are hereby corrected: "September 1965" is changed to "September 1964" (p. 11, line 39); "November 1963" is changed to "November 1964" (p. 17, line 55); "April 1963" is changed to "June 1963" (p. 26, line 22).

had engaged in conduct which violated Section 8(a) (1), (3) and (5) of the Act. In its answers, Respondent admitted certain allegations of the complaints, such as the commerce allegations, but denied having committed any unfair labor practice.

Thereafter, pursuant to due notice, a hearing was held before the undersigned Trial Examiner at Huntington, West Virginia, on August 4, 5, 6, and 17, 1965. All parties were represented and were given full opportunity to present evidence, to examine and cross examine witnesses, to argue orally and to file briefs. The parties waived oral argument and no briefs were filed.

Upon consideration of the entire record and upon my observation of the witnesses while testifying, I make the following:

Findings of Fact

I. THE BUSINESS OF RESPONDENT; THE LABOR ORGANIZATION INVOLVED

Gissel Packing Company, Inc., herein at times called the Company or the Respondent, is a West Virginia corporation with its principal office and place of business in Huntington, West Virginia. It is engaged in the slaughtering, processing, and non-retail sale of beef and pork products. In the 12 months prior to the issuance of each of the complaints, each a representative period, Respondent had a direct inflow of products and livestock, in interstate commerce, valued in excess of $50,000, which was purchased and shipped directly to its plant from points outside the State of West Virginia.

Upon the foregoing undisputed facts, Respondent admits and I find that it is an employer engaged in

commerce within the meaning of Section 2 (2), (6), and (7) of the Act.

It is also undisputed and I find that Food Store Employees Union, Local #347, Amalgamated Meat Cutters and Butcher Workmen of North America, AFL–CIO, hereinafter called the Union, is a labor organization within the meaning of Section 2(5) of the Act.

II. THE ALLEGED UNFAIR LABOR PRACTICES

A. The issues

The complaints allege that Respondent engaged in conduct, such as interrogation, threats, and surveillance, which constituted interference, restraint, and coercion, that it discharged two employees because of their Union membership and activity, and that it violated Section 8(a) (5) and (1) of the Act by refusing to bargain with the Union which represented a majority of its employees in an appropriate bargaining unit. In turn, Respondent contended that it had not engaged in any conduct which violated Section 8(a) (1) of the Act, stated that the employees were not discharged but quit, and asserted that it refused to bargain with the Union because it doubted both the Union's majority and the appropriateness of the bargaining unit.

As in many Board cases, the conclusions reached depend in considerable part upon whether the Examiner credits the witnesses called by the General Counsel or those called by Respondent. Having observed the demeanor of the witnesses and having considered the testimony in the light of all of the circumstances, I have concluded that some of the witnesses for each party testified truthfully in some respects and untruthfully in others. Although the general impres-

sion seems to be that a witness is either completely truthful or completely untruthful, "nothing is more common in all kinds of judicial decisions than to believe some and not all" of the testimony of a witness. *N.L.R.B.* v. *Universal Camera Corp.*, 179 F. 2d 749, 754 (C.A. 2). As a result, "It is no reason for refusing to accept everything a witness says, because you do not believe all * * *." that he says. (*Ibid.*)

In each case, the degree of the interest of the witness in the outcome of the proceeding has been considered in determining his credibility. Some of the witnesses for both sides had a financial interest in the outcome of the proceeding while the interest of others was more subjective, such as an interest in seeing the General Counsel and, indirectly, the Union win or lose. As the Supreme Court said in *N.L.R.B.* v. *Walton Mfg. Co.*, 369 U.S 404, 408:

> For the demeanor of a witness
>
> > "* * * may satisfy the tribunal, not only that the witness' testimony is not true, but that the truth is the opposite of his story; for the denial of one, *who has a motive to deny,* may be uttered with such hesitation, discomfort, arrogance, or defiance, as to give assurance that he is fabricating, and that, if he is, there is no alternative but to assume the truth of what he denies." *Dyer* v. *McDougall,* 201 F. 2d 265, 269. [Emphasis supplied.]

Similarly, the court observed in *N.L.R.B.* v. *Warrenburg Board & Paper Corporation,* 340 F. 2d 920, 923 (C.A. 2), that "The testimony of those who attempted to buttress the Respondent's position was of questionable value since two of the witnesses were closely identified with the Company's management and the others, although originally Union members, were not shown to have retained their membership." And the court pointed out in *N.L.R.B.* v. *Radcliffe,* 211

F. 2d 309, 315 (C.A. 9), certiorari denied, 348 U.S. 833, that the Board "rightfully may decline to credit the testimony of interested witnesses, even though such testimony is uncontradicted."

As will appear, I have credited the testimony of most of the witnesses called by counsel for the General Counsel and have discredited much of the testimony of the witnesses called by Respondent. However, I have not credited the testimony of Herbert Mount, Jr., a witness for the General Counsel, except in those cases in which it is corroborated by similar testimony given by credited witnesses or other record evidence.[1] In other words, the conclusionary findings and the recommended order set forth *infra* would be the same even had Mount not been a witness. My inability to accept Mount's uncorroborated testimony is based in part upon his evasive manner while testifying and in part upon the conflicts between his testimony and his pre-hearing affidavit and lesser conflicts in his testimony at the hearing. On the other hand, when it has been found that a management representative made a statement to a creditable witness, I see no reason to doubt that the same representative made a similar statement to Mount or in his presence. Moreover, it is clear from the testimony of one of Respondent's witnesses that Mount was testifying truthfully in part, *i.e.*, when he asserted that he saw Terry Lewis, the son of one of the Company vice presidents, at a hotel before a Union meeting and heard Lewis make a telephone call to his aunt, Company Secretary-Treasurer Alfreda Closterman, at the plant. (See *infra*).

The presence of Lewis at the hotel has played an important part in my failure to credit most of the

[1] In addition, I have credited little of the testimony of General Counsel's witness Maynard other than that which could have been and was not refuted by available records. (See *infra*.)

testimony of Company Vice President Karl Gissel, who is referred to in the record and herein as Charles Gissel. Although Gissel's testimony is frequently indirect (see *infra*), he sought to create the impression that he did not make the statements attributed to him by witnesses for the General Counsel. In support of his statements, Gissel repeatedly asserted that the Company had learned, as a result of a prior election and unfair labor practice proceeding, what it could and could not do in connection with a Union campaign. However, the admitted presence of Lewis at the hotel is wholly inconsistent with Gissel's claim that the Company was determined not to commit any unfair labor practice during the 1965 Union campaign. No doubt, the Company was given good advice and made good resolutions about how it would conduct itself. Unfortunately, it is often difficult to heed good advice and keep good resolutions when faced with the very situation to which the advice and resolutions were intended to apply.[2] As noted by the court in *Hendrix Mfg. Co.* v. *N.L.R.B.*, 321 F. 2d 100, 103–104 (C.A. 5):

> When, as done here, an employer sets out to campaign against a union, one of the risks is that out of zeal, ignorance, or otherwise, foremen, supervisors, and similar representatives in championing the anti-union cause will overstep the mark.

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[2] When Charles Gissel was asked, "What is a 'Gissel fit'?" he answered, "You ask them boys (indicating); they will tell you. It is no more than a man getting mad and cussing and raising hell." Although Gissel said that he had been warned that the Union employees would try to make him mad, he did not quote even one provocative statement made by an employee. Vice President Herbert Gissel also admitted that he gets mad and that "yelling and cursing" is not uncommon around the plant.

Finally, I have taken into consideration the Company's failure to adduce documentary evidence, such as employee timecards, which were admittedly in existence, and which could have been produced to corroborate critical portions of Charles Gissel's testimony which were contrary to claims made by witnesses for the General Counsel. *N.L.R.B.* v. *Collins & Aikman Corporation,* 146 F. 2d 454, 456 (C.A. 4). There had been ample time to obtain records for there was a 10 day adjournment prior to the day on which Gissel testified and some documentary evidence was offered by Respondent and received into evidence that day. Therefore, I can only assume that the cards were not offered because they would not have supported Gissel's statements. *Interstate Circuit* v. *U.S.* 306 U.S. 208, 225–226; *N.L.R.B.* v. *Conlon Bros. Mfg. Co.,* 187 F. 2d 329, 332 (C.A. 7); *N.L.R.B.* v. *A.P.W. Products Co.,* 316 F. 2d 899, 903 (C.A. 2); *N.L.R.B.* v. *Wallick,* 198 F. 2d 477, 483 (C.A. 3).

B. Background

In late 1960 or early 1961, the same Union claimed to represent a majority of Gissel's employees and filed a representation petition with the Board. A hearing was held and the Board issued a Decision and Direction of Election on January 27, 1961 (Case No. 9-RC-3966), in which it found the following unit appropriate for the purpose of collective bargaining:

> All production and maintenance employees of the Employer at its Huntington, West Virginia, plant including truck drivers, truck driver salesmen and the janitor, but excluding office clerical employees, salesmen, professional employees, guards, officers of the Employer, the salesmen foreman, the truck salesmen foreman, the working foremen of the processing and packaging department, the slaughter house, the freight and

delivery department, and the maintenance department, and all other supervisors as defined by the Act.[3]

An election was subsequently held and the Union lost.

The Union filed unfair labor practice charges against Gissel, apparently in 1960, a hearing was held in May, 1960, and on July 21, 1960, a Trial Examiner issued an Intermediate Report, to which no exceptions were filed, in which it was found that Respondent's president, Paula Gissel (Mrs. R. E. Gissel) informed the employees in a speech that the Company would not recognize the Union even if the employees desired representation, that she would close the plant or greatly curtail its operations rather than accept the Union; and "clearly implied" that the employees would be given the benefit of group insurance if they rejected the Union.[4] It was also found that her son, Vice President Herbert Gissel, told a group of employees that the Company would not accept the Union, that there would be discrimination against employees who joined the Union, and that management might close the plant or run it on a smaller basis if the Union came in.

In addition, it was found that another son, Vice President Edward Gissel, told a group of employees

[3] This is the unit set forth in the complaint as appropriate for bargaining. An issue was raised in the 1961 proceeding concerning the truck driver salesmen and the Board found that they "like the truck drivers, have sufficient interest in common with the production and maintenance employees" to warrant including them in the unit. As set forth *infra*, the Company contended in the instant case that the unit for which the Union sought to bargain was inappropriate because the truck driver salesmen were included.

[4] This Intermediate Report was received and has been considered only as the Union's explanation of why it did not file a representation petition during the 1965 Union campaign.

that Mrs. Gissel would close the plant before she would let a union represent them. The foregoing conduct was found to violate Section 8(a)(1) of the Act. Allegations that the Company engaged in other conduct violative of Section 8(a)(1) were found unsupported by the record. *Gissel Packing Company*, Case No. 9-CA-2068.

C. The refusal to bargain

(1) *The request and refusal*

The Union began its second campaign among Respondent's employees about the middle of January, 1965. As set forth *infra*, there are, at most, 47 employees in the unit alleged by the complaint to be appropriate for collective bargaining and 31 of them signed authorization cards between January 13 and January 22, 1965.

On January 22, Union Representative Sherwood Spencer made a telephone call to Company Vice President Charles Gissel. He asked Gissel if the latter remembered him and Gissel said that he believed he did.[5] Spencer then told Gissel that the Union represented a majority of the employees and requested recognition and bargaining. Gissel replied that Spencer would have to talk to the Company's attorneys and gave Spencer the name of at least one of them. (According to Gissel, when Spencer said he "wanted to talk about the Union, I refused to answer him, I refused to answer his questions.")

That same day, Spencer wrote Charles Gissel:

> This letter will confirm our telephone conversation earlier today in which I requested recognition and bargaining for the eligible employees in your plant. Our Union represents a majority of your eligible employees and we are prepared

[5] Spencer was apparently involved in the 1960–1961 campaign and hearing.

to deliver to you our signed application cards for the purpose of checking them against your payroll so that there will be no possible doubt as to our majority status. We stand ready and willing at any time to deliver these to you or to your representative for the purpose of ascertaining our majority status.

P.S. Eligible employees of your plant includes [sic] truckdrivers.

By letter dated January 26, Vice President Charles Gissel told Spencer:

> We acknowledge your letter of January 22 and your telephone conversation of the same date at which time you advised us you would contact us further about your Union's interest in representing employees of our Company.
>
> We refuse to recognize your Union as the representative of our employees because you do not represent a majority of them. At an earlier election conducted by the National Labor Relations Board you contended that you represented a majority of our employees, but when the election was held an overwhelming majority of the employees rejected your Union and we do not believe that there has been any change in circumstance or opinion of our employees since that time.
>
> We are advised that it is the current organizing technique of your Union to obtain signatures on so called application cards by a variety of means and representations which are not compatible with a free exercise of an employee's choice. We are advised of instances of direct misrepresentation in obtaining employees' signatures by your Union under such circumstances. Employees' signatures are not a free expression of employees' sentiments with respect to Union representation as provided for under the National Labor Relation Act.
>
> Your letter of January 22 suggests that you desire to represent certain employees of our

plant including truck drivers and we do not know who "eligible employees" are as used in your letter and we further do not think that the truck drivers are a part of any appropriate bargaining unit.

If you really represent in your opinion a majority of the employees of our plant, we think that you would have heretofore petitioned the National Labor Relations Board to hold a fair and honest election, giving our employees the right to express their opinion as provided for under Section 7 of the Act, and their choice could be made in an appropriate bargaining unit in a fairly conducted election.

On February 10, Union Representative Spencer wrote Charles Gissel:

This letter will acknowledge your reply to our letter of January 22, showing date of January 26, 1965.

We note that you are refusing to recognize our union as a representative of the employees because you claim we do not represent a majority. You further advise us that it is your understanding that it is our current organizing technique to obtain authorization cards from the employees in order that we may claim representation. You go on further to say that we previously indicated that we represented a majority of the employees and when an election was held the Union was overwhelming defeated. All of this is true.

1. We are certain that the employees of your plant understand well what representation by our Union means to them and when they sign one of our authorization cards they are giving us the right to bargain for them.

2. There is nothing illegal in our requesting representation and bargaining without an election of the employees.

3. The coercion and intimidation and illegal interrogation and threats which occur between

the time an election is petitioned and the actual election by the employers is most difficult for us to combat. The N.L.R.B. and the courts have recognized that an election is no longer necessary when we actually represent a majority of the employees.

We are again offering to deliver to you or to your representative copies of our signed authorization cards which have been signed by a wide majority of your employees. There can be no doubt as to our position with regard to representation if you accept our offer and check these signed authorization cards against payroll records in your office.

We are certain that your claim that the employees do not know what they are doing with respect to signing these cards is in error. We hold a much greater regard for the intelligence of your employees. Therefore, we find we have no choice except to file charges against the company for failure to recognize our Union and failure to bargain with us as representatives of the employees because you can no longer express any good faith doubt as to our representation.

In his letter in reply, dated February 12, Vice President Charles Gissel stated that there was nothing "illegal" about the Company's refusal to bargain because it "honestly" doubted the Union's majority. He repeated that an election should be conducted by the Board and further declared that the Union's reference to "coercion", "intimidation", "illegal interrogation", and "threats" by employers did not apply to Gissel. The Union's "approach", the letter went on, "bolsters our opinion that you do not really honestly represent a majority of the employees." In addition, Gissel charged that the Union was using "These pressures and scare tactics in order to get around [the] expression of the true wishes of our employees * * *." Fi-

nally, the Company said that although it regretted the possibility of unfair labor practice charges, it still doubted the Union's majority and therefore saw no alternative except to allow the matter to be "determined according to the law."[6]

In its reply of February 16, the Union reiterated its offer to submit the signed cards to the Company and its belief that the employees knew what they were doing when they signed the cards.

Neither the Union nor the Company filed a representation petition as provided for by Section 9 of the Act.

Vice President Charles Gissel testified that upon receipt of the Union's request for recognition

> We talked it over among ourselves and decided maybe they might not have a majority because the other time [the Union did not have a majority]. They lost the election.

As for its contention that the unit for which the Union was seeking to bargain was inappropriate, Gissel testified that the Company regarded the "peddle drivers" as salesmen who should not be in the

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[6] Although all of the Company's letters to the Union are signed Karl (or Charles) Gissel, on or about February 12, the following notice was posted at the plant:

February 12, 1965.

"NOTICE"

ALL EMPLOYEES ARE NOTIFIED THAT NO ONE IS AUTHORIZED TO REPRESENT THE VIEWS OF THE COMPANY [ON] ANY LABOR OR UNION MATTERS, EXCEPT ALFREDA CLOSTERMAN. IF ANYONE ATTEMPTS TO DO SO, YOU ARE TO REPORT IT AT ONCE TO ALFREDA CLOSTERMAN IN WRITING.

GISSEL PACKING CO., INC.,
KARL GISSEL

unit.[7] When asked on cross-examination whether Union Representative Spencer said "anything about selling," Gissel answered, "I don't know, I would have to study the letter and see. I didn't read it that far."[8]

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[7] Some of Respondent's regular rank-and-file employees occasionally drive trucks locally and it apparently does not object to their inclusion in the unit. Peddle drivers, who are at times referred to as truck driver salesmen, do not work the fixed schedule of the other employees. In addition, they are paid a salary plus commission whereas the production and maintenance employees are paid by the hour. Of course, the peddlers spend most of their time away from the plant.

[8] Respondent introduced evidence concerning alleged misconduct which, presumably, was offered to justify its refusal to bargain. Employee Rush Moore was asked about "incidents" which began "in January" and told about a stolen coat which was soiled in a vulgar manner. The owner of the coat was not a witness nor was any evidence offered indicating who had committed the act. Moore also listed the appearance of a newspaper clipping about the Union campaign. Both Moore and employee Daniel Ellis testified that several trucks blew up and that when they "felt" the oil it "felt" as if there was sand in it. Both Moore and Ellis testified that samples of the oil, which was purchased from the Pure Oil Company, were sent to that company for analysis but that no report had yet been received, *i.e.* in August. I do not believe that a company like Pure Oil would *delay 6 months* in analyzing the oil and reporting the results, a request which cast doubt on the purity of its product. No doubt employees Moore and Ellis believed that no report had been received, but I am convinced that Pure Oil sent a report and that it was not introduced into evidence because it did not substantiate the company's claim. See cases cited *supra*. I note, also, that Ellis recommended that the Company buy its oil from another company, that this was done, and that there had been no trouble since. Ellis could not say definitely that the oil purchased from Pure Oil was new oil although he said that it "shouldn't" have been used oil. In the light of the above facts, I cannot find that there was sand in the oil.

(2) *The unit and the authorization cards*

As set forth *supra,* the unit established by the Board in 1961 included truck drivers and "truck driver salesmen" (or peddlers) but excluded, *inter alia,* office clerical employees, salesmen, officers of the Employer, the foremen of various named departments, and "all other supervisors as defined by the Act."

Respondent is a family business of which Mrs. R. E. (Paula) Gissel is president. Her sons and daughters, including Charles (K. H.) Gissel, Herbert Gissel, E. W. Gissel, and Edith Gissel Lewis are vice presidents of the Company. Alfreda Closterman is the secretary-treasurer. Charles Gissel is also supervisor of the shipping department and admittedly hires and fires employees in that department; Herbert Gissel is the supervisor of the sausage department and also hires and fires employees in that department; Leoris Gissel also has authority to hire and fire employees in her department; W. R. Mollohan is foreman of the boning department; R. B. Simon is a supervisor in the shipping department; and Clifford Carley is sales supervisor.[9] These 10 persons are therefore "officers of the Employer" and/or supervisors and, as such, are excluded from the unit. There are also two office employees (Martin and Curtis) and two salesmen (Jordan and Springle.)

When these 14 names are substracted from the 61 on the January 22, 1965 payroll, it follows that there are, at most, 47 employees in the bargaining unit.

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[9] In its 1961 Decision and Direction of Election, the Board did not pass upon the question of Mollohan's supervisory status and ruled that he could vote in the election subject to challenge. At the instant hearing, Charles Gissel identified Mollohan as "foreman of the boning department."

There are also three assistant foremen or supervisors: Alfreda Hutchison, L. R. Hutchison, and Roman Edward "Eddie" Lewis.[10] If these persons are excluded from the unit as "supervisors as defined by the Act", there would be only 44 employees in the unit established by the Board in 1961.[11]

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[10] In its 1961 Decision, the Board included L. R. Hutchison in the unit because nothing in the record indicated that he enjoyed a "special status" because he is the son-in-law of one of the vice presidents. However, at the instant hearing, Charles Gissel described Hutchison as an assistant foreman in the sausage room and said that he "takes over" when Vice President Herbert Gissel is absent. He added, however, that Herbert Gissel is not absent very often. In its 1961 Decision, the Board held that the record was insufficient to enable it to determine whether Alfreda Hutchison and R. E. Lewis should be excluded from the unit and allowed them to vote subject to challenge. Charles Gissel testified at the instant hearing that Alfreda Hutchison is a "supervisor" in her mother's absence, and expressed the opinion that, during such periods, she "would probably have about the same authority as her mother." When asked if Alfreda Hutchison could "hire and fire and so forth" in her mother's absence, Gissel answered, "I think so, yes." (Alfreda Hutchison's mother is one of Mrs. Gissel's children.) R. E. "Eddie" Lewis is the son of Vice President Edith Lewis and Charles Gissel described him at the instant hearing as "a sort of assistant foreman" and said that he has the right to discipline employees who do not obey orders. R. E. Lewis was only 21 or 22 at the time of the hearing in August, 1965, and had only worked full time for 2 or 2½ years. This means that he was only 17 or 18 years old and a part-time employee in 1961 and it seems unlikely that he had any supervisory authority at that time.

[11] It has been assumed, for the purpose of determining the question of the Union's majority, that persons whose names appear on the payroll and who are not identified in the record are employees. Of course, they are not in fact in the unit if they come within any of the classifications excluded by the Board.

The record contains 31 cards. On each is the handwritten name of an employee who was in fact on the payroll on January 22 and a date, also handwritten. Only a few of the cards were identified by the employee whose name appears on the card. Most of them were identified by an official Union representative who testified that he saw the employee (whose handwritten name is on the card) sign the card on the date appearing on it.[12] The testimony of none of the Union representatives was disputed at the hearing and I find that the employees signed the cards on the dates which appear thereon. The persons on the January 22 payroll, their status, and the dates on which 31 of them signed cards are set forth in Appendix A, *infra*.

The cards, each of which bears a date no earlier than January 13 and no later than January 22, 1965, read as follows:

APPLICATION

FOOD STORE EMPLOYEES UNION, LOCAL #347

P.O. Box 2751, Charleston, W. Va.

The undersigned hereby authorizes this Union to represent his or her interest in collec-

[12] One card was identified by a fellow employee. The card of R. H. Hysell is marked with an "X" and is witnessed by Union Organizer Spitzer. Although Respondent presented evidence, which I credit, that Hysell can and does print his name, there is no evidence that he can write it. I also note that he was still employed by Respondent at the time of the hearing but was not called to deny Spitzer's testimony. Accordingly, I credit Spitzer's testimony and find that Hysell placed his "X" on the card as described by Spitzer. Kenneth Adkin's card is clearly dated January 19, 1965. Hysell's "signature" was the only one challenged by Respondent.

tive bargaining concerning wages, hours, and working conditions.

(Employer's name)	(Your name)
(Employer's address)	(Your street address)
(Date)[13]	(City and state)
	(Your telephone number)

Although Respondent asserted in its January 26th letter to the Union that it had been "advised of instances of direct misrepresentation in obtaining employee's signatures" on the cards, it introduced not a scintilla of evidence at the hearing in support of its assertion. And Respondent's witness, employee Rush Moore who did not sign a card, testified, "Of course, I knowed, you know, that all the guys, you know the biggest majority of them was for it." Moore is not a supervisor and his knowledge is not attributable to the Company. However, his testimony clearly reveals that he was aware of no conduct by the Union which caused him to believe that the employees who signed cards did so because of misrepresentations or pressures or for any other reason than the one stated on the card, *i.e.* that they wanted the Union to represent them in collective bargaining.

Furthermore, there is no evidence that, with one possible exception, any of the employees who signed cards changed his mind later. On the contrary, there is evidence that a substantial number of them, perhaps all but three, attended a Union meeting in April. (See *infra.*)

[13] In some cases, the date appears in the right-hand column and the line for the employee's telephone number is omitted.

D. Respondent's questioning of and statements to the employees

As noted *supra,* there was an unsuccessful Union campaign among Respondent's employees in 1960-1961.

In September, 1964, employee Jerry Lee Frye was in the office on business and Vice President Charles Gissel told him to shut the door and then asked if anyone had talked to Frye about the Union. Frye said "No" and Gissel told him, "Well, if you do or if I think you're talking to a stranger, that is a Union man, * * * I will fire you right now."[14] During the same period, Charles Gissel saw employee Herbert Mount, Jr. talking to a loan company representative at the plant and asked Mount if the man was a Union representative, stated that he did not believe that the man was from a loan company, and told Mount that employees "caught talking" to a Union representa-

[14] Frye impressed me as a forthright and reliable witness and I have credited his testimony generally. Gissel finally denied having made any such statement after asking, "Why should I * * * there was no union campaign going on back then." Gissel's testimony indicates, however, that he was aware of a campaign by the same Union in the summer of 1964 at the plant of another, Huntington packing company, S. S. Logan Packing Co. A hearing was held in the summer of 1964 in a case involving that Company arising out of a charge filed by the same Union. *S. S. Logan Packing Co.*, 152 NLRB No. 40. A hearing was also held in Huntington on September 8 and 9, 1964 as the result of an unfair labor practice charge filed against a third local packing company by the same Union. *Sehon Stevenson & Co., Inc.*, 150 NLRB No. 64. In short, it is probable that Gissel knew that Union representatives were in town in the summer and fall of 1964. Gissel's testimony discloses that he talked to one of the Logans about the Union sometime in 1965. And a joint union meeting of Gissel, Logan, and Sehon Stevenson employees was held in April, 1965.

tive would be "fired."[15] Frye and Mount signed Union cards in January, 1965, attended a Union meeting on April 17, and were discharged on April 22. (See *infra*).

As set forth *supra*, 31 employees signed cards between January 13 and 22, 1965 and on the latter date, the Union told Charles Gissel that it represented a majority of the employees and requested bargaining.

In the early part of February, employee Frye heard Charles Gissel ask employee Rush Moore, who does a "little bit of everything" and works all over the plant, if he knew or had heard anything about the Union, if

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[15] It often required a number of questions before Gissel denied having asked the questions or made the statements attributed to him by witnesses called by the General Counsel. See, for example, the following:

By Mr. JENKINS:

"Q. Back in September of 1964, Frye testified that in the office you asked him about the Union and made the statement to the effect that you would fire him if he had anything to do with the Union.

Did you make any such statement to Frye back in September of 1964.

"The WITNESS: Why should I, Your Honor, there was no Union campaign going on back then.

"Trial EXAMINER: Answer the question.

By Mr. JENKINS:

"Q. Would you answer my question?

"A. Well, like I said, there was no union campaign going on back then.

"Q. Then you did not have any conversation with him like that?

"A. No."

Having found that Gissel made the above statements in September, 1965, I find that Gissel told Mount in 1963, *i.e.* shortly after he was hired, that the shop was non-union and employees "caught" talking to a Union representative would be discharged. Of course, this statement has been considered only as background. See *N.L.R.B.* v. *Craig-Botetourt Electric Cooperative*, 337 F. 2d 374, 374–375 (C.A. 4).

any Union man had been around to sign him up. Moore answered "No" and Gissel then asked Frye if he knew anything about employee Don Kidd and asked Moore if he knew whether or not employee Don Kidd was the "leader of the Union." Moore again answered, "No," whereupon Gissel said that he would fire Kidd "right there" if he found out "for sure" that Kidd was the "leader." [16]

Although I doubt Mount's reliability in some respects, after serious consideration, I have credited his testimony that, during the same period, he heard Charles Gissel ask Moore "to find out all he could about the Union, who had signed cards, to report back to him." My decision to credit Mount's testimony in this respect and to discredit that of Gissel and Moore is based in considerable part upon Gissel's answer when questioned about the statement attributed to him

[16] I do not credit Mount's testimony that, during the same period, he heard Gissel tell one of the Company's suppliers that "maybe the Union was doing them a favor, that they could cut the slaughter house out * * * and have their meat shipped in." Although employee Kenneth Adkins testified that he heard Gissel say that it would be cheaper to have the meat shipped in and "get rid of most of the men in the back," Adkins stated that Gissel did not mention the Union during his conversation with the supplier. Gissel testified that the suggestion that the Company buy dressed hogs had been under consideration for 4 or 5 years. It is possible, of course, that the idea originated at the time of the 1960–1961 Union campaign. However, I do not find that Gissel indicated in his conversation with the supplier that the Company might close part of its operations because of the Union. In this case, Gissel's testimony was definite and clear. In a number of cases, Gissel was asked only if he "remembered" or "recalled" having made the statements attributed to him.

by Mount.[17] I have also considered Moore's testimony which discloses that the employees were reluctant to talk in his presence. In Moore's words, "Whenever, I walk around the plant if anybody is talking they all shut up and walk away from me." Finally, the admitted presence of a member of the Gissel family at a hotel just before a Union meeting in April (see *infra*) convinces me that the Company set out to learn the identity of the pro-union employees.

The afternoon after the Gissel-Moore-Frye conversation, Gissel asked Frye if he knew anything about the Union and Frye answered, untruthfully, that he did not. Gissel then wanted to know, "What did they offer you?" When Frye said that "they" did not offer him anything, Gissel told him, "I can offer you more than * * * they can."[18]

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[17] When asked the following question by Company counsel, Gissel gave the following answer:

"Q. Now * * * the testimony of Mr. Mounts was that you asked Rush Moore to find out about the Union and report back to you.

"Did you ever make that statement to Mr. Moore?

"A. Let me put it this way.

"During the time we had this Union trouble or however you want to put it, a Government man who handled the election * * * cautioned us not to comment, not to mention the Union at all.

"He said when any of the employees mentioned [the] Union, not to say anything.

"When any employee did mention the Union, I walked away."

There are too many such answers for me to believe that they were unintentional. (See *infra*.)

[18] Frye testified that he was interviewed at the plant by Respondent's attorney who said "something about he was from Cincinnati—had something to do with the Labor Board" or "was working [on] something about the Labor Board." Although I am convinced that Frye so understood Jenkins' statements, I credit the latter's denial that he identified him-

Tommy Lee Burchell, who was employed by the Company at the time he testified, heard about the Union from another employee shortly after he was hired. About a week after he began working, he talked to employee Mount on breaktime.[19] When Burchell

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self as connected with the Board. However, Jenkins did not testify about what he said exactly and I do not doubt that he mentioned the Labor Board and Cincinnati, where the Board's Regional Office is located. Jenkins testified that he introduced himself and a court reporter but could "not recall" whether or not he told Frye that he was the attorney for the Company. Nor could Jenkins "remember" whether he told Frye that he was "working for Gissel Packing Company or not," adding, "It is my recollection that I did but I am not sure that I did." He stated that the reporter "reduced to writing" every word that was said, including his "introduction", and admittedly had a copy of the transcript. However, he refused the Union representative's request that he produce it. Under these circumstances, I am convinced that Jenkins did not make it clear that he was an attorney for the Company. There were other cases of "mistaken identity" such as employee Adkins' belief that a Board representative was a Union representative. Nor am I impressed by Frye's inability to recall the name of the Union, *i.e.* Food Store Employees Union, Local #347, Amalgamated Meat Cutters and Butcher Workmen of North America, AFL-CIO. I have also considered Frye's inability to find the notes he made. No one had instructed him to keep the notes and they were in a little book which, unlike the check-stubs in the same box, could be used for some other purpose and disappear without intent to destroy the notes. If Frye wanted to conceal the notes, he had only to deny having made them.

[19] Burchell testified (in August) that he had been working for the Company "about seven month or a little longer." At another point, Burchell testified that he began working in February and that the above conversation was in February. However, Respondent's records indicate that Burchell was not hired until the first week in March. His inability to recall exactly when he was hired does not cause me to discredit his testimony. I also not that Burchell waited until May to sign

went back to work, Charles Gissel took him to the second floor and asked him where he met Mount. Burchell said that he had met Mount through the latter's wife. Gissel also asked if Mount said anything to Burchell about "a Union." Burchell answered in the negative and Gissel told him that Mount would be "bad" for him and that Burchell should stay away from Mount. In crediting Burchell's testimony I have considered Charles Gissel's testimony that Company Counsel Jenkins and Mr. Logan of the Logan Packing Company advised him "to watch the men coming in because the Union usually put men in to make trouble."

In April, Burchell stopped to talk to employee Lawrence Hysell who owed him some money. Burchell made a note of the amount and a few minutes later, Charles Gissel stopped Burchell and asked if Hysell was trying to get Burchell to go to a Union meeting or to sign a card. Burchell answered in the negative.

Employee Elmer Maynard was still employed by Respondent at the time of the hearing. He signed a Union card in January and Gissel asked him on one occasion if he was going "to walk out" if the others did.[20] (The Board's 1961 Decision and Direction of Election indi-

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a Union card which suggests that he was not sufficiently pro-union to risk his job by testifying falsely against his employer.

[20] Maynard's pre-hearing affidavit dated February 24, 1965 does not state that Charles Gissel asked him if he had been "brainwashed" and I do not credit his testimony in this respect. Although Maynard testified that Gissel asked him about "brainwashing" on several occasions, and the questions may have asked after he gave the affidavit, I am unwilling to so find. Maynard also testified that when Mount was discharged in February, Gissel told Mount that he did not "give a damn about the Union, he could stick it * * *." However, I think Maynard was mistaken about the date and that Gissel made the statement when he discharged Mount and Frye in April. (See *infra.*)

cates that there had been an economic strike sometime earlier.

Elisha Watts, who disclosed that he was strongly prounion, had been hired and fired a number of times over a period of 8 years. In February, he heard Charles Gissel tell a group of employees, "The hell with the Union * * * I'm going to leave [the plant] and turn it over to them." On a later occasion, Watts heard Vice President Herbert Gissel say in the presence of several employes, "I don't want to hear anymore about this Union stuff. If you can't do your work, get out." [21]

Kenneth Adkins, who was employed by the Company at the time of the hearing, signed a Union card in January. During that month, he heard Charles Gissel say that "If the Union got in, he'd just take his money and let the Union run the place the way they wanted to." Also in February, Adkins heard Vice President Herbert Gissel "bawling out" Watts and tell him that the Union was not going to "get in", that it would have to "fight him first." [22]

The notice posted by the Company in February stating that no one except Secretary-Treasurer Closterman was authorized to express the Company's views on Union matters has been considered in determining whether the two Gissel vice presidents engaged in the conduct attriubted to them. The notice suggests that Vice President Charles Gissel, whose name is signed to the notice,

[21] Watts was discharged about May 1, 1965. He admitted on direct examination that he did not hear Vice President Herbert Gissel say that he knew that Watts was "head" of the Union. This is not the testimony of a witness who was willing to testify falsely in order to establish a case against his employer.

[22] Herbert Gissel admitted that he gets "mad" and that both the Gissels and the employees engage in "yelling and cursing." Having considered his demeanor and his testimony as a whole, I cannot credit his testimony that he "never talked about the Union in the plant," testimony which he himself refuted later.

was seeking "to have his cake and eat it too," *i.e.* to make illegal statements and to avoid responsibility for them by posting a self-serving notice. It would surely require more than a notice of this type to convince employees that the actions of two vice presidents did not reflect Company policy. It would also be a naive employee who would submit written reports to Secretary-Treasurer Closterman concerning the things being said by Vice President Charles Gissel and Vice President Herbert Gissel.[23]

E. The Company's conduct in connection with a Union meeting on April 17

A Union meeting was scheduled for Saturday afternoon, April 17, at a local hotel, for employees of three Huntington packing companies, *i.e.* Gissel, Logan, and Sehon Stevenson. On Thursday before the meeting, employee Frye heard Charles Hutchinson, a member of the Gissel family, tell Charles Gissel that there was going to be a Union meeting on Saturday and asked Gissel if he knew about it. Gissel said that he did and that "there would be somebody there watching to see who all went in." Mount and Fry worked in the shipping department under Charles Gissel's supervision and Mount also heard the Gissel-Hutchinson conversation.[24]

The meeting was held as scheduled and it is undisputed that Terry Lewis, the grandson of President Gissel, the son of Vice President Edith Gissel Lewis, and a nephew of Vice Presidents Charles Gissel and Herbert Gissel, was at the hotel as the employees were

[23] All references herein to an individual Gissel are to Charles Gissel unless stated otherwise.

[24] In discredting contrary testimony, I have considered, *inter alia*, that Terry Lewis was at the hotel before the meeting. See *infra*.

arriving for the meeting and was heard making a telephone call to his aunt, Secretary-Treasurer Alfreda Closterman, at the plant.

Lewis is a high school student who works only part-time. He testified that he saw a notice at the plant about the meeting and that it stated that there would be a meeting of "all employees" of Gissel, Logan Packing Company, and Sehon Stevenson, at 2 p.m., Saturday at a Huntington hotel. He did not claim that no member of management knew that he was going to the hotel and asserted that he decided to go to the meeting but "changed his mind" because he was "afraid of the employees; so—I figured they would say something about it." He was asked the following questions by Respondent's counsel and gave the following answers:

> Q. What made you worry when you got down there?
>
> A. I figured I didn't have a right to be there really because——
>
> Q. Well, did anybody say anything or do anything that [led] you to that conclusion; *did they give you any funny looks or anything?*
>
> * * * * *
>
> A. Elisha Watts made a smart remark, he asked me what I was doing down there and gave me a dirty look.[25] [Emphasis supplied.]

Lewis admitted that, after calling his girl friend, he called his aunt, Secretary-Treasurer Alfreda Closterman, at the plant, told her where he was, and that she told him "to come on back." (It was Saturday afternoon and Lewis did not explain why Mrs. Closterman told him to come to the plant.) He also testified that he really called Mrs. Closterman

[25] Lewis was asked, "What is a dirty look?" and answered, "He made a face * * *. Just an ordinary face."

to find out whether his mother, Edith Gissel Lewis, was at the plant but he "was so scared" that he did not ask Mrs. Closterman about his mother. At another point, Lewis said, "I didn't want to go down there in the first place" but he later claimed that he wanted to go "at first" but changed his mind when he saw the employees. He said he was scared because employee Watts "made this face" and invited him to a "beer joint" with a bad reputation.[26] He later admitted that he was in the phone booth when Watts made the "face."

Although Mrs. Closterman was a witness for Respondent, she was not asked about Lewis' telephone call, *i.e.* what he said and what she said. Charles Gissel asserted that neither he nor any other Company representative "sent" Lewis to the meeting but no other member of the Company denied having sent Lewis to the hotel. And no Company representative, including Charles Gissel, denied knowledge that Lewis was going to the hotel.

Lewis was a very uncomfortable witness who frequently had difficulty in recalling what had gone on. When asked if he gave a report on the employees who attended the meeting, Lewis answered, "I don't remember what I said to her [Alfreda Closterman]. I just told her I was up there and she told me to come on back."[27] On cross-examination, he repeatedly an-

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[26] Much later, Lewis said that Watts accused him of stealing a coat and stated that he would get a warrant. Vice President Herbert Gissel admitted that he did not know what was meant by a "dirty" look.

[27] Lewis did say that he did not report on what went on at the meeting but there is no claim that he attended the meeting.

swered questions with such statements as, "I don't remember." [28]

Having considered the entire record, I am convinced and find that, as Lewis testified at one point, he did not want to go "down there," that he did not go on his own initiative, and that he did not go without prior Company knowledge. If no member of the Gissel family sent him to the hotel and none knew that he was going, they would surely have so testified but none did except Vice President Charles Gissel who stated only that no one "sent" Lewis to the hotel. Similarly, no management representative claimed that Lewis did not report the names of the employees he saw at the hotel.

On the basis of the foregoing facts, I find that Lewis was sent to the hotel for the purpose of learning the identity and number of employees who attended the meeting and did report which employees he saw there.

As stated *supra*, Lewis' presence at the hotel is a major reason why I have discredited the testimony of Charles Gissel and others that the Company did not engage in any conduct violative of the Act. As noted above, Charles Gissel repeatedly sought to "prove" his testimony by asserting that the Company had learned its lesson during the 1961 election and the previous unfair labor practice proceeding. However, the presence of Lewis corroborates and lends credence to the testimony of the witnesses for the General Counsel, especially that which indicates that Respond-

[28] The record discloses that employees, other than the two whose discharge is an issue in this proceeding, were discharged. When Lewis was asked on cross-examination if he had told an employee that the Company was "getting rid of the people one by one," he answered "What, I mean, not as far as I can remember, no." Upon being pressed on the point, Lewis gave answers such as, "I don't remember, sir", "I say, it is not as I can remember", and "I don't remember saying it."

ent sought, by questions and other means, to find out which employees were involved in the Union campaign.

According to employee Elisha Watts, all "but three" Gissel employees attended the meeting.

Lowell W. Bailey, who signed a card in the presence of Union Representative Spitzer, was a witness for Respondent. He did not deny having signed the card nor did he claim that he did so as the result of any kind of pressure or misrepresentation. Bailey was clearly unhappy because management had learned that he had signed a Union card, pointing out that the "two guys" who signed him up said that the Company would not know who signed cards. He said also that "they made it sound easy" and that he "would make more money." He went on to say that the Company knew he had signed a card but did not say how it learned that fact. Bailey also failed to explain the circumstances under which he told Vice President Herbert Gissel that he attended the meeting but he conceded that he also told Gissel that he was not having anything to do with the Union "now." However, Bailey refused to say that he was in fact "against the Union."

As a witness for Respondent, he was asked by Company counsel, "The question, Mr. Bailey, is what did [the speaker at the Union meeting] say down there on the subject of what you all were to do at the various companies; what was said?" Bailey answered, "He was talking about breaking glass in a parking lot and nails or something in a parking lot, sir." However, Bailey admitted that he did not know whether the broken glass and tacks happened "in Charleston or Parkersburg or where it was." According to Bailey, sometime after the meeting, he "figured" that the Union wanted Gissel employees to commit similar

acts at the plant. Bailey added that the speaker said something about men working during a strike and that the Union "was going in and get them."

Bailey's demeanor convinced me that he was a witness under pressure to give answers consistent with the questions and I do not believe that his "interpretation" of the remarks at the meeting originated with him. Under these circumstances, I cannot find that the speaker made any statements which could reasonably be interpreted as a suggestion that the employees present break glass or scatter tacks at the plants where they worked.

F. The allegedly discriminatory discharges

Herbert Mount, Jr., began working for the Company in April, 1963 and Jerry Lee Frye was hired in June, 1963. Both worked in the shipping department which is supervised by Charles Gissel. Each signed a Union card and each was questioned by Gissel who also told them that employees engaging in Union activity would be discharged. Both attended the Union meeting on April 17 where they were seen by Terry Lewis.

Mount and Frye normally worked from 6 a.m. to 5 p.m. or later. On Monday, April 19, they left the plant at 11:30 a.m., the beginning of the lunch period. As they passed Charles Gissel's car, he was sitting in it listening to the livestock market report and he asked them to wait a few minutes. After a short wait, Gissel asked Mount if he went to the Union meeting, Mount answered in the negative, but Gissel said he knew Mount was at the meeting, adding that he had been seen there, that "Someone told me you were there." Mount then admitted that he was at the meeting and Gissel told the two men that there were going to be "different arrangements made around here" and

that Mount and Frye were to work from 5:30 a.m. to 11:30 a.m. "until further notice."

As per instructions, Mount and Frye did not work Monday afternoon and did not work Tuesday afternoon. Apparently, they helped Mount's father-in-law on a sewer job on Monday afternoon for Eddie Lewis, the assistant foreman of the department and Charles Gissel's nephew, said he thought that Mount said Tuesday morning that he had worked for his father-in-law the previous afternoon and had made "some money, twenty dollars. I would say, I am pretty sure." There is no claim that the men violated any rule by working elsewhere Monday and/or Tuesday afternoon.

On Wednesday afternoon, Mount and Frye did not return to work after the lunch break and they in fact did some work for Mount's father-in-law. Vice President Charles Gissel sent Lewis, Supervisor Carley and employees Daniel Ellis and Rush Moore to obtain "evidence" that Mount and Frye were working elsewhere.[29]

When Mount and Frye got to work at 5:30 a.m. on Thursday, April 22, their timecards were not in the rack and they went to the office and asked Charles Gissel about their cards. Gissel told them that their cards had been "pulled" because they had "walked off the job" the day before. Frye denied that he and Mount had walked off saying that Gissel had not told them to work Wednesday afternoon. Gissel said that they should have known that they were supposed to

[29] It seems unlikely that Gissel could have talked to Mount's father-in-law on the telephone, as he claimed, because the father-in-law was digging a sewer. But even assuming that Gissel talked to the father-in-law, I find that the latter said nothing which caused Gissel to believe that the two men had gone to work for him permanently.

work Wednesday afternoon but Frye told him, "No, we shouldn't have knowed * * * You told us Monday that we would work from 5:30 till 11:30 'till further notice * * *. You didn't tell us no different." Gissel only repeated that the men "should have knowed" to work Wednesday afternoon. (Mount's and Frye's testimony concerning this conversation is undenied.) Gissel then told the men to get out, that he was going to "call the law." (Gissel claimed that he threatened to call the law after the men "got to raising hell." However, he did not quote what the men said.) As they were leaving, Gissel told them, "You all can take that Union and stick it * * *."

Respondent contended at the hearing that Mount and Frye were not discharged but "quit," *i.e.* left Wednesday afternoon to go to work on another job. But it is not alleged that Mount and Frye had "quit" by working on the sewer job Monday and/or Tuesday afternoon and I do not find that they "quit" by failing to work Wednesday afternoon. They were only following instructions and, as they had done on Monday and Tuesday afternoon, they spent some of the time helping Mount's father-in-law. (For some reason, Respondent seemed to consider it necessary to establish that it took no action against the men and, in effect, denied that they were discharged "for cause" on Thursday morning.)

One of the basic questions to be decided in connection with the discharges is one of credibility, *i.e.* whether Mount and Frye were told to work mornings "until further notice," as they claim, or whether they were told to work Monday and Tuesday mornings and all day on Wednesday, as claimed by Charles Gissel. As set forth previously, I have credited the testimony of Frye which is corroborated by Mount.

In addition to the reasons noted previously for doubting Mount's uncorroborated testimony, I would also hesitate to credit his testimony concerning his instructions about his work schedule for the week beginning Monday, April 19, because of his work record. Thus, he was admittedly late for work a number of times although the record does not reveal how many times.[30] In January or February, 1965, Mount probably caused additional damage to a truck by driving it after it developed engine trouble. He also failed to put some hams in a pan although he claimed, perhaps truthfully, that he had not been told to do so. Furthermore, he was 2 days late returning to work after a vacation in February, probably in part because he had a temporary job elsewhere at which he could earn more than the $1.25 an hour he was paid by Respondent. On another occasion, he did not "shake hides" when requested, or perhaps ordered, to do so. (Shaking hides is a dirty job and the employees hired for the purpose had quit. Moreover, Mount had already worked 8 or

[30] Gissel asserted that Mount was on time "only five or six times" between November, 1963 and April 22, 1965, *i.e.*, in a period of at least 5 months. He also claimed that Mount was always late "from five minutes to forty-five minutes to an hour." Assistant Foreman Eddie Lewis testified only that Mount and Frye were late "pretty often." Although he first said they were late "a half an hour, or an hour, or a couple of hours," he admitted that he could not say "exactly two hours." However, their timecards were not introduced into evidence. Moreover, in a letter to Mount on February 19, 1965, Secretary-Treasurer Closterman stated only that "* * * you have been regularly late on a number of occasions," a statement which surely does not indicate that he was virtually never on time, as claimed by Gissel. I am convinced, therefore, that Gissel's testimony in this respect is greatly exaggerated and this conclusion is another reason why I do not credit his unsubstantiated testimony.

[31] As noted *supra*, Lewis was unsure of the amount Mount claimed to have earned Monday afternoon.

10 hours that day.) In short, I could believe that Mount might have used his "lay off" on Monday and Tuesday afternoon as an excuse for not working Wednesday afternoon if he could have earned more money that afternoon by working elsewhere.[31] In fact, Mount was discharged in February but was recalled because, according to Charles Gissel, he believed that otherwise an unfair labor practice charge would be filed. Gissel also asserted that Mount would have been discharged on another occasion but for the probability of an unfair labor practice charge.

Frye, however, had no such record. He had never been discharged and there is no claim that the Company had ever even considered discharging him. Although Gissel gave a summary statement concerning complaints against Frye, he did not give details or specify times, and his claims are not substantiated by the record generally as they are in the case of Mount.[32] This is not to say that Frye had never done anything for which he could have been criticized but there is nothing in the record which indicates that he was the type of employee who would have failed to work Wednesday afternoon if he had been told to do so. As a matter of fact, Gissel said that he was "surprised" when he learned that Mount and Frye were absent,

[32] One of Gissel's claims was that Frye rode with Mount and was, therefore, late virtually every morning. However, Frye's timecards were not introduced into evidence. Gissel also said that Frye "could read a bill as well as I could and he would come to the office there for me to read the bill for him. He would not pack the meat good in the boxes and he would not put the paper in them and sometimes he would stack them on the flat truck and leave them on the trucks, then the load would spoil." It was also claimed that Frye, like Mount, refused to "shake hides." However, it is not clear that Frye actually refused an order to shake hides. (See the testimony of Eddie Lewis who gave the orders. Gissel admittedly was not present.)

"Because they had never pulled a trick like that before."

An additional reason for crediting the employees' testimony is provided by the fact that Respondent's testimony concerning Mount's and Frye's work schedule and instructions is neither clear nor consistent. According to Charles Gissel, work had been slow for some time and he decided to have some men work Monday and Tuesday (and perhaps Friday) mornings and others work afternoons on those days, to even up the work because "some were getting more time than others."[33] All of the employees were to work all day Wednesday and Thursday, Gissel said, these being the busy days.

Gissel stated that he had been working on the "new" schedule for two weeks and although it had not been set up "completely at that time," some men had worked half days the week before. At another point, Gissel was asked by Company counsel, "In fact, there was—*In fact [Mount's and Frye's] work schedule was not changed, was it?*" and he answered, *"No."* (Emphasis supplied.) However, no records in support of these statements were introduced.

On the other hand, Eddie Lewis, the assistant foreman of the department and the nephew of Charles Gissel, apparently knew nothing about a decision to set up a split schedule and clearly refuted Charles Gissel's testimony that the split schedule was in effect, at least to some extent, the week before. Thus,

[33] Gissel did not explain why he decided to split the work day instead of having all of the employees come in and work the same number of hours with everyone leaving when the day's work was done. This appears to have been the custom in the past. There is no evidence that any employee benefited by the change.

when questioned by Company counsel about the work schedule, he answered:

> They were *working full weeks* but at that time the business, I think, had slacked off and they were *sent home a half day early* the day [Mount] had made the twenty dollars * * * [*i.e.* Monday, April 19]. [Emphasis supplied.][34]

The schedule, Gissel further asserted, applied to three men besides Mount and Frye, *i.e.* Assistant Foreman Eddie Lewis, Supervisor Simon, and employee Maynard. But if Lewis worked half days either the week of April 19 or the week before, he did not say say so at the hearing. In fact, it is clear from Lewis' testimony that he had heard nothing about a change in his schedule.[35] Simon, who worked in the same department, was also a witness and said nothing about a "new" schedule for himself or anyone else.

Maynard who, like Mount and Frye, attended the Union meeting on April 17, claimed that he was told

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[34] At another point, Lewis said that the men had been "let off" at 11:30 a.m. on previous occasions but he would not even estimate when that had happened. As Lewis put it, "I could not say to that, just that he had, in the weeks before *maybe*, just laid them off a half day." [Emphasis supplied.]

[35] When Lewis was asked on cross-examination, "At the same time [Mount and Frye] were told to come in at 5:30 and work until 11:30, there were others * * * who were told to come in at 12:00 and work until some time in the afternoon, were they not?", he answered, "I don't know about that. I know about they were told to come in at 5:30 and work until I don't know when." Lewis also said, "I don't think they were told to work from 5:30 to 11:00. I think they were told to go ahead, the way it is usually done, they tell them when to come in and then if the work is slacked up, they are told then to leave." After a leading question on redirect examination, ("There were two others, were there not?), Lewis said that the schedule "worked out" for Mount and Frye also applied to Maynard.

to and in fact did work afternoons the week of April 19 until after Mount and Frye were discharged, *i.e.* through Wednesday. Although Maynard was not sure of the dates, Respondent was well aware that the General Counsel was claiming that Maynard did not work Wednesday morning and that Maynard's testimony was offered to support Mount's and Frye's assertion that their instructions to work half days likewise applied to Wednesday as well as to Monday and Tuesday.

Charles Gissel also recognized that the Company's case, *i.e.* that he told Mount and Frye to work all day Wednesday, would be strengthened if it could be established that Maynard understood that his instructions to work afternoons did not apply to Wednesday. Accordingly, he stated emphatically that Maynard was wrong, that he worked all day Wednesday and that his timecard would prove it. However, Maynard's timecard was *not* introduced into evidence even though there had been ample time to obtain it, due to a 10 day adjournment, and Respondent in fact introduced other records into evidence the same day that Gissel testified. Cf. *N.L.R.B.* v. *Collins & Aikman Corporation,* 146 F. 2d 454, 456 (C.A. 4). And Assistant Foreman "Eddie" Lewis could not and did not say that Maynard worked all day Wednesday.

I am convinced that Maynard's card was not introduced because it would have established that, as I find, he worked Wednesday afternoon only, a fact which adds support to the General Counsel's claim that Mount's and Frye's instruction to work mornings also applied to Wednesday. Cf. *Interstate Circuit* v. *U.S.,* 306 U.S. 208, 225–226; *N.L.R.B.* v. *Condon Bros. Mfg. Co.,* 187 F. 2d 329, 332 (C.A. 7); *N.L.R.B.* v. *A.P.W. Products Co.,* 316 F. 2d 899, 903 (C.A. 2); *N.L.R.B.* v. *Wallick,* 198 F. 2d 474, 483 (C.A. 3).

In addition, Gissel's testimony concerning his instructions to Mount and Frye is far from precise. Thus, his testimony on direct examination was as follows:

> Q. Now, had Mount and Frye been told or had they not been told as to their hours of work on Wednesday and Thursday?
>
> A. Right.
>
> Q. They had been told?
>
> A. Right.

Nor did Gissel say on direct examination when or where or under what circumstances he told Mount and Frye about their new hours. He was asked on cross-examination when he told Mount and Frye about their new schedule and first said "on Monday morning," which would have been after they attended the Union meeting and had been seen by Terry Lewis. The question was immediately repeated and Gissel answered, "Every Friday, we were laying off at noon on Friday and I would send them home on Tuesday and sometimes on Monday; but never on Wednesday or Thursday."

Finally, Gissel did not deny the testimony of Mount and Frye that when they insisted on Thursday morning that he had not told them to work all day on Wednesday, Gissel replied only that they should have known they were supposed to do so. In other words, Gissel did not claim that he told the two men on Thursday that he had given them explicit instructions to work all day Wednesday and Thursday.

Gissel, an intelligent and experienced business man, revealed that he expected that an unfair labor practice charge would be filed. Under these circumstances, he should have been able to give a detailed account, in his own words, about what he told Mount and

Frye. However, he gave few answers on direct examination in which he independently described what actually happened. Instead, much of his testimony consisted of affirmative or negative answers to what amounted to statements by Company counsel.[36] Moreover, Gissel's assistant and nephew, "Eddie" Lewis, should have been able to corroborate Gissel's testimony concerning the new schedule which, allegedly, also applied to Lewis himself. Instead, it is clear that Lewis knew nothing about the schedule changes which are basic to Respondent's case and which Respondent

[36] Questions of this type include the following: "Then you did not have any conversation with [Frye]" as described by Frye; "In fact [Mount's and Frye's] work schedule was not changed, was it?"; "I will ask you whether or not I told you * * * that it was a method of this Union * * * to put people in the plant to make statements and misquote you; did I not warn you against this eventuality?"; "Now, had you been working on this schedule for some time or not?"; "You asked me how long you had to put up with [Mount's work habits] did you not?"; "Now, had you been working on this schedule for some time before that, or what?"; "You asked me how long you had to put up with this, did you not?"; "Was [Union Representative] Spencer or was he not insisting that these peddle drivers * * * be in the unit?"; "This was not your first trouble with Mount, was it?" Other witnesses were asked similar questions, among them: "There were two others [affected by the schedule change] were there not?"; Now about [January or February] * * * did you have any problems with any vehicles that were operated by Herbert Mount * * *." When the Examiner asked one witness about a date, counsel answered, "I said in January * * *."; "If an employee had wanted to put sand [in the oil] would it have been possible; was it open in such a way that they could have gotten in there?" "* * * did they give you any funny looks or anything?"; "What did the [Union Representative at the April 17 meeting] say with respect to things that you were supposed to do at the various companies?"; "Did he make any threats to you, did he threaten to beat up on you, did he do anything like that or make any statements that you would object to?"

sought to establish by Gissel's testimony. If the schedules for the week of April 19 and the previous week were those alleged by Gissel, Respondent should have been able to produce records which would have proved that the schedules were those described by Gissel. However, no records were introduced.

In short, my conclusion that Mount and Frye were told to work mornings "until further notice" is based in considerable part upon the failure of the testimony of Respondent's witnesses to withstand scrutiny and the absence of documentary evidence which was available and which, I am convinced, would have been produced if it would have supported Gissel's claims, including his assertion that Maynard worked all day Wednesday.[37]

G. Analysis and conclusions

1. *Respondent's conduct which violated Section 8 (a)(1) of the Act*

In this case, it was chiefly Vice President Charles Gissel, not a minor supervisor, who questioned the employees in an effort to learn the identity of the Union adherents and frequently, in the same conversations, threatened the immediate discharge of employees who were found to be involved with the Union.

[37] Even had I found that Gissel did not use the words "until further notice," having considered, *inter alia*, Mount's and Frye's undenied testimony concerning Gissel's statements on Thursday morning and the generalized nature of Gissel's testimony about what he told them originally, I would have found: (1) Gissel did not tell them to work all day Wednesday but assumed that they understood that the half-day schedule did not apply to Wednesday because they knew that it was a busy day; and (2) that Mount and Frye honestly believed that Gissel's instructions to work mornings meant that they were to do so until notified otherwise.

In addition, Gissel's remarks were clear and unequivocal and were followed by action consistent therewith. For example, he announced that a Union meeting would be kept under surveillance and Terry Lewis was in fact at the hotel and placed a telephone call to Secretary-Treasurer Closterman at the plant. Moreover, Gissel's conduct was not limited to one or two remarks but continued off and on from early September, 1964 into the third week in April, 1965 and coincided closely with the periods of known or suspected Union activity.

Having considered Respondent's questions, statements, comments, and actions "in connection with the position of the parties, with the background and circumstances in which they were made and with the general conduct of the parties," I find that the acts set forth below were "part of a general pattern or course of conduct" which interfered with, restrained, and coerced the employees in violation of Section 8(a)(1) of the Act. *N.L.R.B.* v. *Kropp Forge Co.*, 178 F. 2d 822, 829 (C.A. 7), certiorari denied, 340 U.S. 810.

1. Vice President Charles Gissel's questioning of employee Jerry Frye in September, 1964 about whether anyone had talked to him about the Union and his statement in the same conversation "* * * if I think you're talking to a stranger, that is a Union man * * * I'll fire you right now." And Gissel's similar questioning of and statement to employee Mount, also in September, 1964.

2. Charles Gissel's order to employee Rush Moore in February, 1965 "to find out all he could about the Union, who had signed cards, [and] to report back to him."

3. Charles Gissel's interrogation of employee Moore, in the presence of employee Frye, concerning what he knew or had heard about the Union, about whether a

Union representative had tried to sign Moore up, his asking if employee Frye knew anything about employee Don Kidd, his questioning of Moore about whether Kidd was the "leader of the Union," and Gissel's statement, in the same conversation, that he would fire Kidd promptly if he found out "for sure" that Kidd was the Union leader.

4. Vice President Charles Gissel's questioning of Frye in February as to whether he knew anything about the Union, a question which Frye answered untruthfully, his asking Frye what the Union had offered him and Gissel's statement, "I can give you more than they can." Cf. *N.L.R.B.* v. *Camco, Incorporated,* 340 F. 2d 803, 804 (C.A. 5).

5. Vice President Charles Gissel's asking of employee Burchell, shortly after the latter was hired, *i.e.* in late February or early March, 1965, about where he met Frye and Gissel's warning, in the same conversation, to stay away from Mount, that Mount would be "bad" for Burchell.

6. Vice President Charles Gissel's statement in February, "The hell with the Union * * * I'm going to leave [the plant] and turn it over to them" and his statement that if the Union "got in", he would take his money and let the Union run the plant the way they wanted to.

7. Vice President Herbert Gissel's statements during the same period, *i.e.* that he did not want to hear anymore about "this Union stuff," if the employee could not do his work, to "get out," and that he was not going to have the Union "get in," that it would have to "fight him first." Although these statements might not constitute interference, restraint and coercion if they stood alone, their effect must be considered in the light of what had gone before and what came after. See *Daniel Construction Company* v. *N.L.R.B.*,

341 F. 2d 805, 811 (C.A. 4), in which the court pointed out that words which would be lawful if considered separately, can "unite in such a fashion as to yield an improper end product." And the court said in *Hendrix Mfg. Co.* v. *N.L.R.B.*, 321 F. 2d. 100, 103–104 (C.A. 5), that in cases in which the Company "makes no bones" about its opposition to the Union, the Board may, "with ample justification * * * regard" statements of "anti-union attitude" as "background" against which "to measure statements, conduct, and the like made by other management spokesmen, especially in terms of the interpretation which the employees reasonably could put on such actions. More specifically, this would bear on the question whether, from the listeners' point of view, these statements by subordinate management constituted forbidden coercion, threats, or intimidation."

8. Charles Gissel's statement that he would have someone at the Union meeting on April 17 to report on who was there and his statement that Mount had been seen at the meeting. *N.L.R.B.* v. *Community Motor Bus Co.*, 335 F. 2d 120, 122 (C.A. 4); *Hendrix Mfg. Co.* v. *N.L.R.B.*, 321 F. 2d 100, 104, n. 7 (C.A. 5); *N.L.R.B.* v. *Prince Macaroni Mfg. Co.*, 329 F. 2d 803, 805–806 (C.A. 1).

9. The presence of Terry Lewis, a member of the Gissel family, at the hotel on April 17, as the employees were arriving for a Union meeting, and his call to Secretary-Treasurer Closterman at the plant. In *N.L.R.B.* v. *Collins & Aikman Corporation*, 146 F. 2d 454, 455 (C.A. 4), the court said that "Any real surveillance by the employer over the Union activities of employees, whether frankly open or carefully concealed, falls under the prohibitions of the Act." In view of all of the circumstances, the employees could not fail to believe that Lewis was sent to the hotel

to see who came to the meeting and could not fail to believe that he would and did report the names of the employees he saw there. Cf. *N.L.R.B.* v. *Champa Linen Service Company,* 324 F. 2d 28, 30 (C.A. 10). That he in fact did so is established by Gissel's statement to Mount on Monday, when the latter denied having attended the meeting, that Gissel had been told that Mount was at the meeting.

10. Gissel's interrogation of Mount on April 19 about whether he attended the Union meeting, his telling Mount that he was not telling the truth when he answered in the negative, and Gissel's statement to Mount and Frye, in the same conversation, that there would be changes in their working hours.

11. Gissel's statement to Mount and Frye when they were discharged on April 22, about what they could do with the Union. Cf. *Hendrix Mfg. Co., supra.*

2. *Respondent's refusal to bargain in violation of Section 8(a)(5) of the Act*

As set forth *supra,* the Union filed a representation petition in late 1960 or early 1961, a hearing was held, and the Board issued a Decision and Direction of Election in January, 1961 in which it established the unit appropriate for collective bargaining. It included, over Respondent's objection, the truck driver salesmen or peddlers. There being no claim and no evidence that there had been any change in the status of the peddlers between 1961 and 1965, I regard myself as bound by the Board's 1961 unit determination.[38]

[38] As the court said in *Florence Printing Co.* v. *N.L.R.B.*, 333 F. 2d 289 291 (C.A. 4), "Even if the company entertained doubt [about the appropriateness of the unit], it is no defense to a refusal-to-bargain charge where the unit is proper."

Furthermore, as also set forth *supra,* 31 of the 47 (or even fewer) employees in the unit signed cards in mid-January, 1965 which state unequivocally that the "undersigned hereby authorizes this Union to represent his or her interest in collective bargaining concerning wages, hours, and working conditions."

Thus, when Union Representative Spencer notified the Company on January 22 that the Union represented a majority of "eligible" employees, it did in fact represent a substantial majority of the employees in the unit found appropriate by the Board.[39] It is admitted, of course, that Respondent refused to bargain with the Union.

At the hearing, the only basis asserted for the Company's doubt of the Union's claim that it represented a majority was Charles Gissel's statement that "We talked it over among ourselves and decided that maybe they might not have a majority" because the Union had lost an election 4 years earlier after having claimed to represent a majority. However, employees are entitled to and at times do change their minds and a similar argument was rejected by the court in *Overnite Transportation Company* v. *N.L.R.B.,* 308 F. 2d 279, 283 (C.A. 4). The court also commented in *Overnite* that the employer "unmistakably demonstrated" that it gave some credit

[39] Although Vice President Charles Gissel stated in his first letter to the Union that the Company did not know who the "eligible" employees were, he did not mention the unit question in his later letters. Moreover, at the hearing, Gissel disclosed that the only question concerning the unit was that raised by the inclusion of the peddlers. He also made it clear that he recognized that the Union's reference to "truck drivers" in its letter referred to peddlers rather than to its regular employees, some of whom occasionally drive trucks locally. In other words, Gissel understood that the Union was requesting the Company to bargain for the employees in the unit established by the Board in 1961.

to the Union's claim by embarking upon a course of "illegal" conduct, including interrogation and speeches. Such conduct, according to the court, constituted an "absolute refutation" of the Company's good faith claim.

Further proof that Respondent was willing to assert unfounded claims to justify its refusal to bargain is provided by its statement in its letter of January 26 that it had been "advised of instances of direct misrepresentations" used by the Union to obtain signatures on the cards. At the hearing, however, Respondent introduced not a scintilla of evidence that the Union had made misrepresentations to the employees or had obtained the signatures by any other method which might create a doubt about whether the employees signed the cards for any reason other than that they desired Union representation.

It is also significant that Respondent did not file its own representation petition with the Board as it is empowered to do by the Act. It would surely have been quick to do so if it had good reason to believe that the Union could not establish its majority in a Board-conducted election. Cf. *Florence Printing Co.* v. *N.L.R.B.*, 333 F. 2d 289, 292 (C.A. 4); *Overnite Transportation Company* v. *N.L.R.B.*, 308 F. 2d 279, 283 (C.A. 4). (The first unfair labor practice charge was not filed until February 11, *i.e.* nearly 3 weeks after the Union's bargaining request.)

At the same time, Respondent ignored the Union's offer to submit, for examination and comparison with payroll signatures, the signed cards upon which the Union was relying. Nor did it question at the hearing the signature on any card except the one signed with an "X" by Ralph Hysell. (As noted *supra*, Hysell was not called as a witness, Respondent's evidence consisting of testimony that Hysell could print his

name.) Thus, as the court said of the employer in *N.L.R.B.* v. *Inter-City Advertising Co.*, 190 F. 2d 420, 421–422 (C.A. 4), Respondent made no attempt to determine whether the Union's claim was justified but instead engaged in unfair labor practices "in an attempt to get rid of it as a bargaining representative." See also *N.L.R.B.* v. *Philamon Laboratories, Inc.*, 298 F. 2d 176, 180 (C.A. 2).

Having considered Respondent's failure to file its own representation petition, its failure to make any reply to the Union's offer to submit the cards on which it was relying, its wholly unsupported charge that it had been advised of instances of misrepresentation by the Union, and its efforts to destroy the Union's majority by coercive conduct such as interrogation, threats, and surveillance, I find that its refusal to bargain was not due to a good faith doubt of the Union's majority "but to a positive rejection by the company of the principle of collective bargaining." *N.L.R.B.* v. *Inter-City Advertising Co.*, 190 F. 2d 420, 422 (C.A. 4). That this was Respondent's attitude was revealed by Vice President Charles Gissel, who answered the Union's letters, when he gave the following reply to a question about one aspect of the Union's first letter, "I don't know. I would have to study it and see. I didn't read it that far." It follows, therefore, and I find that Respondent violated Section 8(a) (5) and (1) of the Act by refusing to bargain upon request, with the majority representative of its employees in an appropriate bargaining unit.

Finally, there is no evidence that any of the employees who signed cards, with one possible exception, thereafter changed his mind. On the contrary, there is evidence indicating that all but three of the employees attended the Union meeting on April 17. In short, this is not a case in which the Union subsequently lost

its majority and in which it must be inferred that its loss was attributable to the Company's unfair labor practices.

Apparently, Respondent's position is that a Union can never establish its majority on the basis of cards but can do so only in a Board-conducted election. But the courts have repeatedly affirmed the Board's holding that an employer does not have a "vested right" to an election, especially in situations in which the employer's unfair labor practices have made a fair election impossible.[40] As the Supreme Court pointed out in *United Mine Workers of America* v. *Arkansas Oak Flooring Company*, 351 U.S. 62, 74–75, the Act "says nothing as to how the employees' representative shall be chosen * * *" and "It does not make it a condition that the representative * * * shall be certified by the Board * * *." In other words, the Act "leaves open the manner of choosing such representatives" and in cases in which a clear majority of the employees have, by means of cards, designated the Union to represent them, the employer is obligated to recognize that Union. In the words of the court, "A Board conducted election is not the only method by which an employer may satisfy itself as to the Union's majority status." 351 U.S. 73, 8, n. 8.

Two of the alternative methods open to the employer in a situation such as this one were mentioned by the court in *Overnite Transportation Company* v. *N.L.R.B.*, 308 F. 2d 279, 283 (C.A. 4), where it stated:

> If the company * * * sincerely doubted the Union's majority status, it could have challenged the Union to substantiate its claims *by checking the*

[40] See, for example: *N.L.R.B.* v. *Philamon Laboratories, Inc.*, 298 F. 2d 176, 179 (C.A. 2); *N.L.R.B.* v. *Wheeling Pipe Line, Inc.*, 229 F. 2d 391, 393 (C.A. 8); *N.L.R.B.* v. *Trimfit of California, Inc.*, 211 F. 2d 207, 209 (C.A. 9).

> *union cards against the payroll or by requesting the Labor Board to hold a representation election* as is its right under Section 9(C)(1)(B) of the Act. [Emphasis supplied.]

Another method was approved by the court in *Florence Printing Co.* v. *N.L.R.B.*, 333 F. 2d 289, 282 (C.A. 4), in which the court noted that the Company could have agreed to the private election suggested by the Union. An employer who not only fails to take any steps to check the Union's claims but also attempts "to defeat the Union by means of conduct violative of Section 8(a) (1) and (3)" of the Act may not later claim that it has a right to such an election. "Such a rule," the court said, "would encourage employers to commit unfair labor practices rather than promote the freedom of employees to decide for or against a union in an atmosphere free from restraint or coercion * * * ." *Overnite*, 308 F. 2d at 283.

Respondent may also argue that each employee who signed a card should have been called and personally authenticated his card. But in a case such as this in which there is not the slightest evidence that the employees whose handwritten names (or in one case an "X") appear on the cards did not in fact sign them on the date appearing thereon, the undisputed testimony of the persons in whose presence the cards were signed is sufficient. Cf. The *Colson Corporation* v. *N.L.R.B.*, 347 F. 2d 128, 134 (C.A. 8), in which the court recognized that

> the law permits alternative methods of authentication. Thus the courts have approved the authentication of such cards by a witness to their execution. *N.L.R.B.* v. *Economy Food Center*, 7 Cir., 1964, 333 F. 2d 468, 471, or by comparison with a known specimen of the person's handwriting. *N.L.R.B* v. *Philamon Laboratories*, 2 Cir., 1962, 298 F. 2d 176, 179–180, certiorari denied, 370 U.S. 919 * * *

In other words, when a Union has obtained signed cards from a majority of the employees, the employer is under a duty to bargain unless he "has a good-faith doubt as to the reliability of the authorization cards." (*Ibid*) [41]

3. *Respondent's discriminatory discharge of employees Mount and Frye*

As set forth *supra,* Herbert Mount, Jr. began working for the Company in April, 1963 and was told shortly thereafter that the plant was "non-union" and

[41] Although it has been found that Respondent's refusal to bargain was not motivated by a good faith doubt of the Union's majority, there is language in *International Ladies' Garment Workers Union* v. *N.L.R.B.*, 366 U.S. 731, 738–740, which suggests that a good faith doubt concerning the Union's majority is no defense to a refusal to bargain if the Union in fact represented a majority. There, the Court affirmed the Board's holding that the Company violated the Act by bargaining with a Union which it believed in good faith, though mistakenly, represented a majority of the employees. After noting that the employer's action "invaded" the employees' rights, the Court went on to say, "More need not be shown * * *. It follows that prohibited conduct cannot be excused by a showing of good faith." If the Union in fact represents a majority, it would seem that the employees are similarly denied their rights under the Act if the employer refuses to bargain even if he acts in good faith. This appeared to be the Court's view for it stated:

"Assuming that an employer *in good faith* accepts or *rejects a union claim of majority status*, the validity of his decision may be tested in an unfair labor practice proceeding. *If he is found to have erred in* extending or *withholding recognition, he is subject only to a remedial order* requiring him to conform his conduct to the norms set out in the Act * * *." *Cf.* the court's statement in *Florence Printing Co.* v. *N.L.R.B.*, 333 F. 2d 289, 291 (C.A. 4), that "Even if the company entertained doubt [as to the appropriateness of the unit], it is no defense to a refusal-to-bargain charge where the unit is proper."

that employees "caught" talking to a Union representative would be discharged. Mount worked in the shipping department under the supervision of Vice President Charles Gissel as did Jerry Lee Frye who was hired in April, 1963. Both men signed Union cards in January 1965, both were questioned and threatened by Gissel who clearly suspected that they were involved in the Union campaign. In April, they attended the Union meeting kept under surveillance by the Company. The next working day, Gissel told Mount that he had been seen at the meeting, and told Mount and Frye that they were to work mornings "until further notice." Then, on April 22, their timecards were "pulled" and they were accused of walking off the job because they did not work Wednesday afternoon and, instead, helped Mount's father-in-law for an undisclosed period. In addition, Gissel made a vulgar suggestion about what the men could do with the Union and threatened to call the police.[42]

Needless to say, if an employer first directs employees to work from 5:30 a.m. to 11:30 a.m. "until further notice" and then discharges them for not working in the afternoon, his motive must be something other than the employees' failure to work or their disregard of orders.

Furthermore, the discharge of Mount and Frye cannot be considered in a vacuum but must be considered in the light of all that had gone before. "While union membership in itself is no bar to the discharge of employees, it sometimes discloses the

[42] As noted previously, Respondent's basic contention at the hearing was that it had taken no action against Mount and Frye, *i.e.* that they had quit. For some reason, Respondent refused to contend that the two men were discharged for cause and seemed to feel that it must establish that it was in no way responsible for the fact that they did not work for the Company after 11:30 a.m. on April 21.

real motive actuating an anti-union employer in discharging such employees, notwithstanding other asserted reasons." *N.L.R.B.* v. *Nabors,* 196 F. 2d 272, 275 (C.A. 5), certiorari denied, 344 U.S. 865. And the same court stated in *N.L.R.B.* v. *Houston & North Texas Motor Freight Lines,* 193 F. 2d 394, 398 (C.A. 5), that in cases in which the Company's opposition to the Union is clear, "* * * every equivocal act that was done may be properly viewed in the light of [the Company's] animus toward the efforts to organize its men."

Similarly, the courts, as well as the Board, hold that discharges which "coincide" with the intensification of organizational activity, in this case the Union meetings, must be examined with special care. Cf. *N.L.R.B.* v. *Jones Sausage Company,* 257 F. 2d 878, 882 (C.A. 4); *Angwell Curtain Company, Inc.* v. *N.L.R.B.,* 192 F. 2d 899, 903 (C.A. 7); *Sardis Luggage Co.* v. *N.L.R.B.,* 234 F. 2d 190, 196–197 (C.A. 5).

The series of events which ended with the discharge of Mount and Frye have been set forth previously. They began in September, 1964 at about the time a Board hearing was being held in Huntington as the result of an unfair labor practice charge filed by the same Union against another local packing company. At that time, Vice President Charles Gissel warned that employees "caught" talking to a stranger, who was a Union representative, would be discharged promptly. However, there was no Union activity among Gissel employees at that time and Charles Gissel had nothing more to say about the Union until the following January or February, *i.e.* until after the Union claimed to represent a majority of the employees and requested bargaining.

The Company's response and attitude toward the Union's claims and request have been discussed *supra,*

including its failure to file its own representation petition or to examine the cards which the Union offered to submit. Even more significant is the Company's wholly unsupported assertion in justification of its refusal to bargain that it had been advised of "instances" in which the Union had obtained the signatures on the cards by misrepresentations. For if Respondent would assert a reason for its refusal to bargain which had no basis in fact, it might also be willing to assert (or create) an equally unsupported reason to justify its discharge of Union adherents.

After the Company's refusal to bargain, Charles Gissel repeatedly questioned employees about the Union and threatened reprisals against the employee leaders of the Union campaign. Among other things, Gissel asked employee Rush Moore what he knew about the Union, asked if employee Kidd was the "leader" of the Union movement, and said that he would fire Kidd immediately if he found out "for sure" that Kidd was the Union leader. Gissel also directed Moore to find out all he could about the Union, about who had signed cards, and to report what he found out. Gissel also asked Frye what he knew about the Union, what it had offered him, and told Frye that the Company could offer him more than the Union could. In addition, Gissel asked employee Burchell where he met Mount, whether Mount had said anything to him about the Union, and warned Burchell to stay away from Mount.

There is no evidence of any Union activity between January, when the cards were signed, and April, when the Union meeting was held. Similarly, Respondent had little if anything to say about the Union between January–February and April. Then when the Union meeting was announced, Gissel let it be known that he knew about the meeting and that some one

would be there to report on who attended it. And Terry Lewis was at the hotel on Saturday, April 17, and called his aunt, Secretary-Treasurer Closterman, at the plant. It was also in April that Gissel asked employee Burchell if employee Hysell had tried to get Burchell to go to a meeting or to sign a card.

The admitted presence of Lewis at the hotel is one of the most significant facts in the record both generally and in connection with the discharge of Mount and Frye. As noted *supra,* it disproves the Company's repeated assertion that it was determined not to commit any unfair labor practice during the Union's 1965 campaign. It also discloses that Respondent was determined to learn the identity of the pro-union employees, a subject in which it could have had no legitimate interest. *N.L.R.B.* v. *Martin Sprocket & Gear Co.,* 329 F. 2d 417, 420 (C.A. 5).

Perhaps most important of all, by keeping the Saturday meeting under surveillance, Respondent learned that Mount, Frye, Maynard and probably most of the employees who had signed cards in January were still pro-union. This information revealed that the Company's refusal to bargain, its interrogation and threats, and its announced plan to keep the meeting under surveillance had not been effective, *i.e.* its prior conduct had not caused the employees to defect from the Union and to abandon their efforts to obtain Union representation.

On Monday, Gissel made a change in working hours which affected only employees who attended the Union meeting, *i.e.* Mount, Frye, and Maynard. Although the alleged purpose of the change was to spread the work more evenly, there is no evidence that any employee benefited by the change, only that the hours of Mount, Frye, and Maynard were reduced. Then, when Mount and Frye did not work Wednes-

day afternoon, after having been told to work from 5:30 a.m. to 11:30 a.m. "until further notice," they were discharged, threatened with the police, and advised what they could do with the Union.

The relationship in time between Mount's and Frye's presence at the hotel, the change in their work schedule and their discharge a few days later is a fact which does not depend upon the credibility of any witness. Presumably, Respondent will argue that these events were wholly unrelated, *i.e.* were merely coincidental. Coincidences do happen but a finding of "coincidence" in view of the parallel series of events summarized above would be warranted only if Respondent's testimony was clear and precise and was corroborated by available documentary evidence. However, as noted *supra,* Charles Gissel was either unable or unwilling to state in detail and in his own words what he told the men when he notified them about their new schedule. No timecards were introduced although they were clearly available. Finally, Gissel's nephew and assistant, "Eddie" Lewis, refuted rather than corroborated Gissel's testimony about the schedule changes which, allegedly, applied to Lewis as well as to Mount, Frye, and Maynard. The failure of Respondent's testimony to stand up under scrutiny provides further evidence that something more was involved than the straightforward discharge of two employees for good cause and adds support to and strengthens the inference that they were discharged because of their Union activity. *N.L.R.B.* v. *Griggs Equipment, Inc.* 307 F. 2d 275, 278 (C.A. 5).

Having considered the record as a whole, including Gissel's instructions to Mount and Frye to work from 5:30 a.m. to 11:30 a.m. "until further notice," the Company's refusal to bargain, and its unsupported explanation for its refusal, its efforts to learn the

identity of the Union adherents, its threats of reprisal against the employee leaders of the Union campaign, its surveillance of the Union meeting, the timing in relation thereto of the change in the schedule of the two men and their discharge, Gissel's statements at the time of the discharges, and the failure of Respondent's explanation of its action to stand up under scrutiny, I conclude that a preponderance of the evidence establishes that Respondent discharged Mount and Frye because of their Union activity, both generally and their presence at the meeting on April 17 in particular. It follows, therefore, and I find that Respondent thereby violated Section 8(a) (3) and (1) of the Act.

Furthermore, the conclusionary finding set forth above would not be different had it been found that there was a genuine misunderstanding about Mount's and Frye's hours on Wednesday, *i.e.* that Gissel believed that they understood that they were to work all day Wednesday and they misunderstood Gissel's instructions. If the men were expected to work, their absence no doubt caused some inconvenience. However, there is no claim that their absence meant that the day's work was not completed and there is no evidence that their absence caused the other employees to work later than usual to get the work done. And the fact remains that four men could be spared in the middle of the afternoon to go looking for Mount and Frye and to obtain "evidence" upon which Respondent could take action against them.

Moreover, there is no claim and no evidence that the Company has a firm and well-known rule that men absent on Wednesday, without good cause, are automatically terminated. Nor does it claim that it always checks on the activity of an absent employee. Perhaps, Respondent will argue that it set about obtaining "evi-

dence" about what Mount and Frye were doing because it had reason to believe that they had "quit" and gone to work for someone else. This argument, however, would ignore the fact that Gissel knew that the men had done similar work on Monday and/or Tuesday afternoon only because they had been laid off at 11:30 a.m. on those days. Under these circumstances, Gissel might at least have considered the possibility that they were working elsewhere Wednesday afternoon for the same reason, *i.e.* because they believed that they were not supposed to work at the plant Wednesday afternoon. (Respondent did not claim that it did not expect the men to report to work Thursday morning.)

Instead, Gissel clearly decided to discharge Mount and Frye without waiting to hear their explanation and he refused to give any weight to Frye's insistence on Thursday morning that he did not understand that he was supposed to work the afternoon before. Although Gissel might justifiably have doubted Mount's word, he had no reason to believe that Frye was not telling the truth when he asserted that, at most, he misunderstood Gissel's instructions. (As noted *supra*, Gissel did not testify that he told Mount and Frye Thursday morning that he had given them explicit orders to work all day Wednesday. On the contrary, Frye testified without denial that Gissel said only that he and Mount should have *known* they were supposed to work all day Wednesday.) And, as Gissel admitted, the two men had never "pulled" such a "trick" before.

When to these facts are added Gissel's anger, his threat to call the police, and his vulgar suggestion about what the two men could do with the Union, it is apparent that Gissel's actions and reactions were not prompted primarily by their absence the previous afternoon even assuming, *arguendo*, that they had misunderstood Gissel's instructions. Moreover, even if the

Company had grounds for which it could have discharged Mount and Frye validly, it does not follow automatically that they were discharged for this reason alone or for this reason primarily. On the contrary, as the court stated in *Nachman Corporation* v. *N.L.R.B.*, 337 F. 2d 421, 422 (C.A. 7),

> it is well settled that the presence of valid grounds for an employee's discharge does not legalize it where "other circumstances indicate that the union activity weighed more heavily in the decision to fire him than did dissatisfaction with his performance." [Case citations omitted.] [42]

Applying the above test to the instant case, I would conclude, in the light of the entire record, that Mount and Frye would not have been discharged but for their Union activity even had it been found that Gissel believed that Mount and Frye understood that his instructions did not apply to Wednesday and that they, in turn mistakenly believed that they did. Even under these circumstances, I would find that Gissel seized upon their absence as a pretext not only to rid the plant of two active Union adherents but to indicate what could happen to other employees who continued to disregard Respondent's warning that Union activity would not be tolerated. Cf. *N.L.R.B. v. Link-Belt Co.*, 311 U.S. 584, 602, in which the Court recognized that an employer's purpose may be to make an "example" of employees whose conduct *vis-a-vis* the Union has displeased him.

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[42] See also: *Wonder State Mfg. Co.* v. *N.L.R.B.*, 328 F. 2d 835, 837 (C.A 6); *N.L.R.B.* v. *Jamestown Sterling Corp.*, 211 F. 2d 725, 726 (C.A. 2); *N.L.R.B.* v. *WTVJ, Inc.*, 268 F. 2d 346, 347-348 (C.A. 5) and cases cited therein.

Conclusions of law

1. Gissel Packing Company, Inc., is an employer engaged in commerce within the meaning of Section 2 (2), (6) and (7) of the Act.

2. Food Store Employees Union, Local #347, Amalgamated Meat Cutters and Butcher Workmen of North America, AFL–CIO, is a labor organization within the meaning of Section 2(5) of the Act.

3. All production and maintenance employees of Respondent employed at its Huntington, West Virginia, plant including truck dirvers, truck driver salesmen and the janitor, but excluding office clerical employees, salesmen, professional employees, guards, officers of Respondent, the salesmen foreman, the truck salesmen foreman, the working foremen of the processing and packaging department, the slaughter house, the freight and delivery department and the maintenance department, and all other supervisors as defined in the Act, constitute a unit appropriate for collective bargaining within the meaning of Section 9(b) of the Act.

4. On and after January 22, 1965, the date on which the Union requested recognition and bargaining, the Union represented in fact and in law a substantial majority of the employees in the bargaining unit set forth in paragraph 3 above.

5. Respondent's admitted refusal to bargain with the Union, on request, with respect to the wages, hours, and working conditions of the employees in a unit found appropriate for bargaining by the Board was not motivated by a good faith doubt about the Union's majority and, therefore, violated Section 8(a) (5) and (1) of the Act.

6. By interrogating employees concerning their Union activity and the Union activity of other em-

ployees, by threatening employees with reprisals for engaging in Union activity, by directing an employee to find out who had signed cards and to report the information to. Vice President Charles Gissel, by asking an employee what the Union had offered him and by telling him that the Company could offer him more than the Union could, by announcing its intention to have someone at a Union meeting to report on who attended it, by keeping a Union meeting under surveillance, by making disparaging and vulgar remarks about the Union, the latter in a context of interrogation, threats, and surveillance, the Company engaged in conduct which constituted interference, restraint, and coercion within the meaning of Section 8(a)(1) of the Act.

7. By discharging employees Herbert Mount, Jr., and Jerry Lee Frye because of their Union membership and activity, Respondent violated Section 8(a)(3) and (1) of the Act.

8. Respondent did not violate the Act except by engaging in the conduct summarized in paragraphs 5, 6, and 7 above.

The Remedy

Having found that Respondent engaged in the unfair labor practices set forth above, the recommended order will direct Respondent to cease and desist therefrom and to take the affirmative action normally required in such cases. Any backpay found to be due to Herbert Mount, Jr., and Jerry Lee Frye shall be computed in accordance with the formula set forth in *F. W. Woolworth,* 90 NLRB 289, and *Isis Plumbing & Heating Co.,* 138 NLRB 716. Since the Union has at all times material herein represented a majority of the employees, in law and in fact, in an appropriate bargaining unit, the recommended order will require that it bargain with the Union on request.

In view of the broad range of Respondent's illegal conduct, including its discriminatory discharge of Mount and Frye, action which goes to the very heart of the Act (*N.L.R.B.* v. *Entwistle Mfg. Co.*, 120 F. 2d 532, 536 (C.A. 4)), I am convinced that Respondent would interfere with the employees' statutory rights under similar circumstances in the future. As a result, the recommended order will direct Respondent to cease and desist from engaging in conduct which in any manner denies its employees the rights guaranteed them by the Act.

Upon the foregoing findings of fact, conclusions of law, and the entire record, and pursuant to Section 10(c) of the Act, I hereby issue the following recommended order:

Recommended Order

Gissel Packing Company, Inc., its officers, agents, successors and assigns shall:

1. Cease and desist from:

(a) Discouraging membership in the Food Store Employees Union, Local #347, Amalgamated Meat Cutters and Butcher Workmen of North America, AFL–CIO, or in any other labor organization, by discharging employees or by discriminating against them in any other manner because of their Union membership and activity.

(b) Refusing to bargain, on request, with the above-named Union, the majority representative of its employees in the following appropriate bargaining unit:

> All production and maintenance employees of the Employer at its Huntington, West Virginia, plant including truck drivers, truck driver salesmen, and the janitor, but excluding office clerical employees, salesmen, professional

employees, guards, officers of the Employer, the salesmen foreman, the truck driver salesmen foreman, the working foremen of the processing and packaging department, the slaughter house, the freight and delivery department, and the maintenance department, and all other supervisors as defined by the Act.

(c) Coercively interrogating its employees concerning their own and the Union activity of other employees, threatening reprisals for engaging in Union activity, directing employees to find out which employees have signed cards and report the information to management, stating that the Company could offer more than the Union could, announcing that it will have some one at a Union meeting to report on who attended it, keeping a Union meeting under surveillance, and making disparaging and vulgar remarks about the Union in a context of interrogation, threats, and surveillance.

(d) In any other manner interfering with, restraining, or coercing its employees in the exercise of their right to form, join, or assist Food Store Employees Union, Local #347, Amalgamated Meat Cutters and Butcher Workmen of North America, AFL–CIO, or any other labor organization, to bargain collectively through a representative of their own choosing, or to engage in other concerted activity for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any or all such activity.

2. Take the following affirmative action necessary to effectuate the policies of the Act:

(a) Offer Herbert Mount, Jr., and Jerry Lee Frye immediate and full reinstatement to their former or substantially equivalent positions, without prejudice to their seniority and other rights and privileges, and

make them whole for any losses they may have suffered by reason of the discrimination against them in the manner set forth in the section entitled, "The remedy." Notify the above-named employees if presently serving in the Armed Forces of the United States of their right to full reinstatement upon application in accordance with the Selective Service Act and the Universal Military Training and Service Act of 1948, as amended, after discharge from the Armed Forces.

(b) Bargain collectively, upon request, with Food Store Employees Union, Local #347, Amalgamated Meat Cutters and Butcher Workmen of North America, AFL–CIO, the statutory representative of its employees in the above-described appropriate bargaining unit, with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment, and if an understanding is reached, embody such understanding in a signed agreement.

(c) Preserve and make available to the Board or its agents, upon request, for examination and copying, all payroll records, social security payment records and reports, and all other reports necessary to analyze the amount of backpay due under these recommendations.

(d) Post at its plant copies of the notice attached hereto marked Appendix B.[*] Copies of said notice to be furnished by the Regional Director of the Ninth

[*] In the event that this Recommended Order be adopted by the Board, the words, "A DECISION AND ORDER" shall be substituted for the words "THE RECOMMENDATIONS OF A TRIAL EXAMINER" in the notice. In the further event that the Board's Order be enforced by a United States Court of Appeals, the words, "A DECREE OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER" shall be substituted for the words, "A DECISION AND ORDER."

Region shall, after being signed by Respondent's representative, be posted by Respondent immediately upon receipt thereof and maintained by it for 60 consecutive days thereafter in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director for the Ninth Region, in writing, within 20 days from the date of the receipt of this Decision what steps the Respondent has taken to comply herewith.[45]

It is further recommended that the complaint be dismissed in all other respects.

Dated at Washington, D.C.

ROSANNA A. BLAKE,
Trial Examiner.

APPENDIX A

Payroll January 22, 1965 [1]

Name	*Status*	*Card date*
Mrs. R. E. Gissel	President	
E. W. Gissel	V. Pres. (Son of Mrs. R. E. Gissel)	
H. L. (Herbert) Gissel	V. Pres. (Son of Mrs. R. E. Gissel) right to hire/fire.	
K. H. (Charles) Gissel	V. Pres. (Son of Mrs. R. E. Gissel) right to hire/fire.	
A. L. Closterman	Sec.-Treas.; right to hire/fire	
H. B. Martin	Bookkeeper	
Harriett Curtis	Clerk in office	

[1] The persons assumed to be employees are those as to whom there is no evidence in the record. The assumption is for the purpose of determining the maximum number of employees in the unit and does not constitute a finding that they are in fact in the unit if they come within any of the classifications excluded by the Board in its Decision and Direction of Election.

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[45] In the event that this Recommended Order be adopted by the Board, this provision shall be modified to read: "Notify said Regional Director, in writing, within 10 days from the date of this Order what steps the Respondent has taken to comply therewith."

Name	Status	Card date
Edith Lewis	V. Pres. (Daughter of Mrs. R. E. Gissel).	
Marie Snead	[Assumed to be an employee]	
Leoris Gissel	(Daughter-in-law of Mrs. R. E. Gissel) right to hire/fire.	
Siddy Caldwell	Employee	1/16/65
Nell Charles	Employee	1/18/65
Evelyn Collins	Employee	
Emogene Ellis	Employee	1/19/65
Alfreda Hutchison	(Niece of V. Pres. Charles Gissel; part-time supervisor).	
C. P. Adkins	Employee	1/18/65
K. R. Adkins	Employee	1/19/65
L. W. Bailey	Employee	1/14/65
D. F. Billups	[Assumed to be an employee]	1/20/65
J. J. Bonham	Employee	1/21/65
I. H. Caldwell	Employee	
George Collins	Employee	1/15/65
R. L. Curry	[Assumed to be an employee]	1/18/65
D. W. Ellis	Employee	1/19/65
Earl Fortner, Jr	Employee	
Francis Fortune	Employee	1/14/65
L. R. Hutchison	Grandson-in-law of Mrs. R. E. Gissel; part-time foreman.	
L. R. Hysell	Employee	1/14/65
R. H. Hysell	Employee	1/16/65
J. K. Johnson	Employee	1/19/65
D. C. Kidd	Employee	
H. C. Lewis (Terry)	(Son of V. Pres. Edith Lewis) part-time employee.	
C. F. McComas, Jr	Employee	1/18/65
E. B. Maynard, Jr	Employee	1/21/65
Donald Meadows	Employee	1/19/65
J. T. Mollohan	Employee	1/13/65
W. R. Mollohan	Foreman boning dept	
R. D. Moore	Employee	
W. D. Moore	Employee	1/19/65
Dewey Parsley, Jr	Employee	1/22/65
Curtis Queen	Employee	
P. D. Rowe	Employee	1/18/65
J. M. Vance	Employee	1/16/65
Elisha Watts	Employee	1/16/65
R. B. Simon	Supervisor	
J. L. Ellis	Truck driver	1/18/65
J. L. Frye	Employee	1/19/65
R. E. Lewis (Eddie)	(Son of V. Pres. Edith Lewis) assistant sup.; right to discipline.	

Name	Status	Card date
H. E. Mounts, Jr.	Employee	1/19/65
J. P. Robinson	Employee	1/20/65
S. H. Rowe	Employee	1/21/65
J. B. Scott	Employee	1/18/65
Clifford Carley	Sales supervisor (route salesman)	
W. W. Bowyer	Truck salesman-peddler	
N. A. Gibson	Peddler	
J. B. Harless	Peddler	
T. L. Jordan	Car salesman; lives in Logan, W. Va.	
C. R. Kitchen	Peddler	
E. M. Osborne	Peddler	
C. F. Springle	Car salesman; lives in Charleston, W. Va.	
L. E. Turpin	Peddler	1/20/65

APPENDIX B

NOTICE

PURSUANT TO THE RECOMMENDATIONS OF A TRIAL EXAMINER of the National Labor Relations Board and in order to effectuate the policies of the National Labor Relations Act, we hereby notify you that:

WE WILL NOT discourage membership in FOOD STORE EMPLOYEES UNION, LOCAL #347, AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO, or any other Union, by discharging or by discriminating in any other manner against employees because of their Union membership and activity.

WE WILL NOT coercively question employees concerning their own Union activity or the Union activity of other employees; we will not threaten to discharge employees or to punish them in any other way because they join, work for, attend meetings of, or otherwise help FOOD STORE EMPLOYEES UNION, LOCAL #347, or any other labor organization; direct employees to find out and report on which employees have signed Union cards; tell employees that we can offer more than the Union can; say that we will have someone at a Union meeting to report on who attended it; send

anyone to a Union meeting or to a place where a Union meeting is going to be held; make remarks about the Union which will make employees believe that we will take action against them because of their Union activity.

WE WILL NOT in any other manner interfere with, restrain, or coerce our employees in their right to join, work for, attend meetings of, or otherwise help FOOD STORE EMPLOYEES, LOCAL #347, or any other labor organization.

WE WILL OFFER Herbert Mount, Jr., and Jerry Lee Frye immediate and full reinstatement to their former or substantially equivalent positions, without loss of seniority or other rights and privileges, and we will pay each of them the amount of money necessary to compensate them for any loss he has suffered because of his discriminatory discharge.

WE WILL bargain, on request, with FOOD STORE EMPLOYEES, LOCAL UNION, #347, AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO, as the representative of the employees in the unit set forth below, concerning wages, hours, and other terms and conditions of employment and, if agreement is reached, we will put the agreement in writing and will sign it:

"All production and maintenance employees employed at our Huntington, West Virginia, plant, including truck drivers, truck driver salesmen and the janitor, but excluding office clerical employees, salesmen, professional, employees, guards, officers of the Company, the salesmen foreman, the truck salesmen foreman, the working foremen of the processing and packaging department, the slaughter house, the freight and delivery department, and the maintenance department, and all other supervisors as defined by the Act."

All of our employees are free to become, remain, or to refrain from becoming or remaining members of FOOD STORE EMPLOYEES UNION, LOCAL #347, or any other labor organization, except to the extent that such right may be affected by an agreement in conformity with Section 8(a)(3) of the National Labor Relations Act.

GISSEL PACKING COMPANY, INC.

(Employer)

Dated: _____ By: _____
(Representative) (Title)

NOTE: We will notify either of the above named employees presently serving in the Armed Forces of the United States of his right to full reinstatement, upon application, in accordance with the Selective Service Act and the Universal Military Training and Service Act of 1948, as amended, after discharge from the Armed Forces.

This Notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced, or covered by any other material.

If employees have any question concerning this Notice or compliance with its provisions, they may communicate directly with the Board's Regional Office, Room 2023 Federal Office Building, 550 Main Street, Cincinnati, Ohio 45202 (Tel. No. 684-3627).

APPENDIX D

United States Court of Appeals for the Fourth Circuit

No. 11671

NATIONAL LABOR RELATIONS BOARD, PETITIONER

versus

HECK'S, INC., RESPONDENT

On Petition for Enforcement of Orders of the National Labor Relations Board

(Argued January 11, 1968. Decided June 28, 1968.)

Before HAYNSWORTH, Chief Judge, and BOREMAN and WINTER, Circuit Judges

Elliott Moore, Attorney, National Labor Relations Board, (Arnold Ordman, General Counsel, Dominick L. Manoli, Associate General Counsel, Marcel Mallet-Prevost, Assistant General Counsel, and Bernard M. Dworski, Attorney, National Labor Relations Board, on brief) for Petitioner, and Frederick F. Holroyd for Respondent.

PER CURIAM:

We decline enforcement of orders of the National Labor Relations Board [1] requiring Heck's, Inc. to bargain with Meat Cutters Local 347 in its Ashland, Kentucky store and Teamsters Local 175 in its warehouses in the Charleston, West Virginia area. Insofar as the orders proscribe other unfair labor practices and re-

[1] 166 NLRB Nos. 32 and 38.

quire the reinstatement of employee Goins, they will be enforced.

The Board's findings that Heck's, Inc. violated § 8 (a) (1) of the National Labor Relations Act[2] by interrogating employees with regard to their union sympathies, threatening reprisals against employees for their union support, creating the impression of surveillance of its employees' union activities and offering employee benefits in exchange for their union opposition, are supported by substantial evidence. There is also substantial evidence to support the finding that employee Goins was discharged for his union activities, his dismissal being a violation of §§ 8(a) (3) and (1) of the Act.

However, the Board's findings that the refusal of Heck's, Inc. to bargain with the unions was a violation of §§ 8(a) (5) and (1) of the Act cannot stand. The Teamsters and the Meat Cutters based their demands for recognition and bargaining on union authorization cards. In the Charleston area warehouses, the union had obtained 13 signed authorization cards from the employees in the requested unit of 26 members when the first demand for recognition was made. An additional card was procured the next day when a second demand was made. The Ashland store union fared a little better, obtaining 21 signed authorization cards from 38 employees in the unit, although there was some ambiguity as to the precise size of the bargaining unit requested. Heck's, Inc. refused to recognize and bargain with the unions under a claim of belief that they had not yet attained majority status in the respective bargaining units.

We have recently discussed the unreliability of the cards, in the usual case, in determining whether or

[2] 29 U.S.C. § 151, *et seq.*

not a union has attained a majority status and have concluded that an employer is justified in entertaining a good faith doubt of the union's claims when confronted with a demand for recognition based solely upon union authorization cards. We have also noted that the National Labor Relations Act after Taft-Hartley amendments provides for an election as the sole basis of a certification and restricts the Board to the use of secret ballots for the resolution of representation questions.[8] This is not one of those extraordinary cases in which a bargaining order might be an appropriate remedy for pervasive violations of § 8(a)(1). It is controlled by our recent decisions and their reasoning. See *NLRB* v. *S.S. Logan Packing Co.*, 4 Cir., 386 F. 2d 562; *NLRB* v. *Sehon Stevenson and Co.*, 4 Cir., 386 F. 2d 551; *Crawford Mfg. Co.* v. *NLRB*, 4 Cir., 386 F. 2d 367, cert. denied ____ U.S. ____, 36 LW 3403. There was not substantial evidence to support the findings of the Board that Heck's Inc. had no good faith doubt of the union's claims of majorities.

Enforcement granted in part and denied in part.

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[8] Even the Board has agreed with our construction of the Act. "Section 9(c) of the Act, as amended, prescribes the election by secret ballot as the sole method of resolving a question concerning representation, and leaves the Board without the discretion it formerly possessed—but rarely exercised—to utilize other 'suitable means' of ascertaining representatives." Annual Report of the NLRB for 1948 at p. 32.

320-064—68——6

APPENDIX E

United States Court of Appeals for the Fourth Circuit

No. 11671

NATIONAL LABOR RELATIONS BOARD, PETITIONER

vs.

HECK'S, INC., RESPONDENT

THIS CAUSE came on to be heard upon the petition of the National Labor Relations Board for the enforcement of certain orders issued by it against Respondent, Hecks, Inc., its officers, agents, successors, and assigns on June 28, 1967, and June 30, 1967, in proceedings before the said Board known upon its records as Cases Nos. 9–CA–3356, 9–CA–3477, and 9–CA–3728; upon the answer of the Respondent, and upon the certified list in lieu of a transcript of the record; and the said cause was argued by counsel.

ON CONSIDERATION WHEREOF, it is ordered, adjudged and decreed by the United States Court of Appeals for the Fourth Circuit, that the said orders of the National Labor Relations Board be, and they are hereby, enforced as to those portions dealing with the violations of §§ 8(a) (3) and (1) of the National Labor Relations Act and requiring the reinstatement of employee Goins, and that enforcement with regard to that portion of the orders dealing with the violations of §§ 8(a) (5) and (1) of the Act is denied; and that the said Respondent, Hecks, Inc., its officers, agents, successors and assigns abide by and perform the directions of the Board in said orders as so en-

force contained, in accordance with the opinion of the Court field herein.

(S) CLEMENT F. HAYNSWORTH, Jr.,
Chief Judge, Fourth Circuit.

[Filed: June 28, 1968, Samuel W. Phillips, Clerk]

A True Copy, Teste: Samuel W. Phillips, Clerk. By Margaret M. Welton, Deputy Clerk.

APPENDIX F

United States of America

Before the National Labor Relations Board

Cases Nos. 9–CA–3356, 3477

HECK'S INC.

and

CHAUFFEURS, TEAMSTERS AND HELPERS LOCAL UNION NO. 175, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA

DECISION AND ORDER

On November 30, 1965, Trial Examiner Thomas F. Maher issued his Decision in the above-entitled proceeding, finding that Respondent had engaged in and was engaging in certain unfair labor practices, and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the attached Trial Examiner's Decision. He also found that the Respondent had not engaged in other unfair labor practices alleged in the complaint and recommended dismissal of these allegations. Thereafter, the General Counsel filed limited exceptions to the Trial Examiner's Decision with a supporting brief, and Respondent filed limited exceptions.

On March 23, 1966, the Board entered an order reopening the record and remanding the proceeding to the Regional Director for further hearing before the Trial Examiner to receive evidence from the parties

concerning the nature and appropriateness of the bargaining unit, the majority status of the Union, and the alleged refusal of the Respondent to bargain with it.

On March 28, 1967, the Trial Examiner issued his Supplemental Decision, in which, on the basis of the evidence adduced at the reopened hearing, he found that Respondent had engaged in certain unfair labor practices, and recommended that it cease and desist therefrom and take certain affirmative action, as set forth in the attached Trial Examiner's Supplemental Decision. The Respondent filed exceptions to the Trial Examiner's Supplemental Decision and a supporting brief.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its powers in connection with this case to a three-member panel.

The Board has reviewed the rulings made by the Trial Examiner at the hearings and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Trial Examiner's Decision, the Supplemental Decision, the exceptions and briefs, and the entire record in this case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner, as modified.[1]

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[1] Contrary to the Trial Examiner, we find that during the period when Ivan Vickers was employed at Respondent's Nitro store warehouse, he was not a supervisor. Although nominally in charge of shipping, Vickers worked under either Foy, the warehouse manager, or Graley, the assistant warehouse manager; his authority to direct other warehouse employees was limited to using warehouse employees who were not otherwise occupied to assist him. In loading and unloading merchandise, Vickers worked alongside the other employees with no authority to hire, fire, or discipline. Moreover, although

ORDER [2]

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that Respondent, Heck's Inc., its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Unlawfully interrogating employees concerning their union membership, activities, or desires.

(b) Threatening their employees with reprisals if they select the Union as their representative.

(c) Offering or granting their employees wage increases and/or promotions in exchange for their opposition to the Union.

(d) Discharging or otherwise discriminating against employees in respect to hire and tenure of employment for the purpose of discouraging union membership or concerted activities.

(e) Refusing to bargain with Chauffeurs, Teamsters and Helpers Local Union No. 175, International

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Respondent's policy was to pay its supervisors on a salary rather than on an hourly basis, up to one month prior to his leaving the job for the Air Force, Vickers was paid an hourly rate with no greater benefits than those received by other warehouse employees. Further, we note that at the hearing, in response to a question as to who were the supervisors at the Nitro warehouse, Graley replied that they consisted of himself and Foy; he failed to mention Vickers.

The Trial Examiner inadvertently excluded employee James Goins from the unit. With the inclusion of Goins and Vickers, the bargaining unit consisted of 26 rather than 24 employees on October 9, 1964, when the Union sought recognition. The record is corrected accordingly.

On Page 6, line 37 of the Trial Examiner's Supplemental Decision, the date October 12 is corrected to read October 13.

[2] In the event that this Order is enforced by a decree of a United States Court of Appeals, there shall be substituted for the words "a Decision and Order" the words "a Decree of the United States Court of Appeals, Enforcing an Order."

Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, as the exclusive representative of employees in the following appropriate unit:

> All truckdrivers and warehouse employees, including all pricers, at the Nitro, St. Albans, and Charleston warehouses, excluding office clericals, guards, professional employees, and supervisors as defined in the Act, and all other employees.

(f) In any other manner interfering with, restraining, or coercing employees in the exercise of their rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action which the Board finds will effectuate the polices of the Act:

(a) Upon request, bargain collectively with the above-named labor organization as the exclusive representative of all Respondent's employees in the unit found to be appropriate and, if an agreement is reached, embody such an understanding in a signed agreement.

(b) Offer James Goins immediate and full reinstatement to his former or substantially equivalent position, and make him whole for any losses he may have suffered, together with 6 percent interest thereon, in accordance with *F. W. Woolworth Co.*, 90 NLRB 289, and *Isis Plumbing & Heating Co.*, 138 NLRB 716.

(c) Notify James Goins, if presently serving in the Armed Forces of the United States, of his right to full reinstatement, upon application, in accordance with the Selective Service Act and the Universal Military Training and Service Act, as amended, after discharge from the Armed Forces.

(d) Preserve and, upon request, make available to the Board and its agents, for examination and copying, all payroll records, social security records, time-

cards, personnel records and reports, and all other records relevant and necessary to the determination of backpay due and the reinstatement provided under the terms of this Order.

(e) Post at its Nitro, St. Albans, and Charleston, West Virginia, stores and warehouses, copies of the attached notice marked "Appendix." Copies of said notice, on forms provided by the Regional Director for Region 9, shall, after being duly signed by the Respondent, be posted immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(f) Notify said Regional Director, in writing, within 10 days from the date of this Decision, what steps have been taken to comply herewith.

It is further ordered that so much of the complaint in this proceding as alleges unlawful discrimination against Ivan Vickers, be, and it hereby is, dismissed.

Dated, Washington, D.C.

[SEAL] FRANK W. MCCULLOCH,
Chairman,
JOHN H. FANNING,
Member,
HOWARD JENKINS, JR.,
Member,
National Labor Relations Board.

APPENDIX

Notice to All Employees

Pursuant to

A Decision and Order of the National Labor Relations Board and its order to effectuate the policies of the National Labor Relations Act, as amended, we hereby notify our employees that:

WE WILL NOT unlawfully interrogate our employees concerning their union membership, activities, or desires.

WE WILL NOT threaten our employees with reprisal for engaging in union activities or for supporting CHAUFFERS, TEAMSTERS, AND HELPERS, LOCAL UNION NO. 175, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, or any other labor organization.

WE WILL NOT offer or grant our employees wage increases and/or promotions in exchange for opposition to the aforesaid Union.

WE WILL NOT discharge, or otherwise discriminate against our employees in respect to hire or tenure because they are leaders in the aforesaid Union or have participated in concerted activities protected by Section 7 of the National Labor Relations Act.

WE offer immediate and full reinstatement to his former or substantially equivalent position to James Goins, and WE WILL make him whole for any loss of pay he may have suffered.

WE WILL notify James Goins, if presently serving in the Armed Forces of the United States, of his right to full reinstatement, upon application, in accordance with the Selective Service Act and the Universal Military Training and Service Act, as amended, after discharge from the Armed Forces.

WE WILL, upon request, bargain collectively with CHAUFFEURS, TEAMSTERS, AND HELPERS LOCAL UNION NO. 175, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, as the exclusive representative of all the employees in the bargaining unit described below, concerning rates of pay, wages, hours of employment, and other conditions of employment, and, if an understanding is reached, embody it in a signed agreement. The bargaining unit is

> All truckdrivers and warehouse employees, including all pricers, at the Nitro, St. Albans, and Charleston warehouses, excluding office clericals, guards, professional employees, and supervisors as defined in the Act, and all other employees.

WE WILL NOT in any other manner interfere with, restrain, or coerce our employees in the exercise of rights guaranteed them by Section 7 of the Act.

All of our employees are free to become or refrain from becoming members of the above-named Union, or any other labor organization.

HECK'S INC., *Employer.*

Dated: _____ By _____
(Representative) (Title)

This notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced, or covered by any other material.

If employees have any question concerning this Notice or compliance with its provisions, they may communicate directly with the Board's Regional Office, Room 2407, Federal Office Building, 550 Main St., Cincinnati, Ohio 45202 (Tel. No. 684-3686).

United States of America Before the National Labor Relations Board Division of Trial Examiners Washington, D.C.

Cases Nos. 9-CA-3356, 3477

HECK'S, INC.

and

CHAUFFEURS, TEAMSTERS AND HELPERS, LOCAL UNION NO. 175, INTERNATIONAL BROTHERHOOD OF TEAMSTER, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA

William C. Mittendorf, Esq., of Cincinnati, Ohio, for the General Counsel. *Gardner, Gandal & Holroyd*, by *Fredrick F. Holroyd, Esq.*, of Charleston, W. Va., and *George V. Gardner, Esq.*, of Washington, D.C. for the Respondent. *Pottenbarger & Bowles*, by *Martin C. Bowles, Esq.*, of Charleston, W. Va., for the Charging Union.

Before THOMAS F. MAHER, Trial Examiner.

TRIAL EXAMINER'S DECISION

Statement of the Case

Upon a charge and an amendment thereto filed on October 23 and December 4, 1964, and a second charge filed on February 15, 1965, by Chauffeurs, Teamsters and Helpers Local Union No. 175, International

Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, herein called the Union, the Regional Director for the Ninth Region of the National Labor Relations Board, herein called the Board, issued a consolidated complaint and an amendment thereto on behalf of the General Counsel of the Board against Heck's Inc., Respondent herein, alleging violations of Section 8(a) (1), (3) and (5) of the National Labor Relations Act, as amended (29 U.S.C., Sec. 151, *et seq.*), herein called the Act. In its duly filed answer Respondent, while admitting certain allegations of the complaint, denied the commission of any unfair labor practice.

Pursuant to notice a hearing was held before me on June 28 and 29, 1965, at Charleston, West Virginia, where all parties were represented by counsel and afforded full opportunity to be heard, to present oral argument and to file briefs with me. Although the parties were specifically invited to file briefs with me on the issue of refusal to bargain presented herein, only Respondent complied.

Upon consideration of the entire record, including Respondent's brief, and upon my observation of each witness appearing before me, I make the following:

Findings of Fact and Conclusions of Law

I. THE BUSINESS OF THE RESPONDENT

Heck's Inc., Respondent herein, is a West Virginia corporation engaged in the retail sale of merchandise, including ready-to-wear clothing, sporting goods,

hardware, household goods, toys and cosmetics at various locations in the States of Kentucky and West Virginia, including Ashland, Kentucky, and Huntington, Parkersburg, Nitro, St. Albans and Charleston, West Virginia. It is stipulated that during the 12-month period ending in May 1965 Respondent, in the course and conduct of its business operations, had a gross volume of retail sales in excess of $500,000, and purchased directly from points outside the State of West Virginia and had shipped directly to it in West Virginia goods and products valued in excess of $50,000. Upon the foregoing I conclude and find that Respondent is an employer engaged in commerce and in operations affecting commerce within the meaning of Section 2 (6) and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

It is conceded and I accordingly conclude and find that the Union is a labor organization within the meaning of Section 2(5) of the Act.

III. THE ISSUES

1. The discrimination against James Goins.
2. The supervisory status of Ivan Vickers.
3. The failure of Vickers to use due prudence in seeking reinstatement.
4. Respondent's threats to and interrogation of employees.
5. The failure of proof as to the appropriateness of the bargaining unit.

IV. THE UNFAIR LABOR PRACTICES

A. Sequence of events

1. *The Union demand for recognition and Respondent's refusal.*

In the Charleston, West Virginia area, and specifically in Charleston itself, and nearby Nitro and St. Albans, Respondent operated discount department stores, each with its own warehouse, separately supervised and manned with its own distinct work force. Early in October 1964 some of these warehouse employees developed an interest in the Union, sought out the Union's business agent, Robert Jackson, and obtained from him instructions on organizing the employees together with a supply of blank authorization cards. Prominent in this initial activity were Employees James E. Goins and Virgil R. Searls, and Ivan L. Vickers, whose supervisory status is in issue. By October 9, 13 cards authorizing the Union to represent them had been signed by employees in the three warehouses and submitted to Jackson. The signers and their designated occupations were:

Charles D. Curry	Receiving and Shipping Clerk.
Charles G. Ferrell	Warehouseman.
James E. Goins	Laborer.
Edward L. Hughart	Warehouseman.
Richard Johnson	Truckdriver.
Franklin T. Lanham	Laborer.
James A. May	Laborer.
Opie G. Nelson	Warehouseman.
Samuel D. Nelson	Warehouseman.
Virgil R. Searls	Warehouseman.
Dayle Thornton	Warehouseman.
Ivan L. Vickers	Shipper.
Larry Woodall	Truckdriver-Warehouseman.

Thereafter, on October 10, Everett Nichols, Warehouse Clerk, signed an authorization card, and on October 13 Anna L. Adkins, a Cosmetics Pricer, did likewise.

On the afternoon of Friday October 9 Jackson met with Respondent's president, Fred Haddad, and informed him that a majority of employees having signed up with the Union he was requesting recognition of the Union for the truckdrivers and warehousemen employed at the warehouses in Nitro, Charleston and St. Albans. In support of his claim and request Jackson presented the cards to Haddad who inspected each one in turn. After expressing surprise at the identity of some of those who had signed the cards and some consultation with Personnel Manager Ray Darnell he suggested going through the warehouses and talking with the men involved. This idea was vetoed by Jackson.[1] Haddad then sent for Ivan Vickers whose card was among those in the pack and, showing him the card, asked him if he had signed it. Vickers replied that he had. Whereupon Haddad directed Vickers to return to work.

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[1] The foregoing is the credited testimony of Jackson. President Haddad denied having seen the cards, testifying that he only looked at the top one, Vickers', and then after "flipping through them" without looking at them he handed them to Personnel Manager Darnell whom he had meanwhile summoned to the meeting. Darnell was not questioned concerning this. I do not accept Haddad's uncorroborated denial that he saw these cards, contradicting at is does Jackson's credited account of the incident. Moreover, Employee S. D. Nelson corroborates Jackson to the extent that Haddad inspected the cards. Thus he credibly testified that Haddad told him that "the union representative had been there and showed him cards signed by the employees of Heck's" and that when Haddad saw Nelson's name "he almost passed out."

During the course of the conversation generated by Jackson's request for recognition he indicated, as noted above, that it was for the warehouses at Nitro, Charleston, and St. Albans. At this point Haddad informed him, according to Jackson, "that he also had stores in Huntington and Parkersburg, West Virginia, and Ashland, Kentucky, each of them having warehouses," but Jackson persisted in his original request for a unit limited to the local warehouses and expressed a willingness to limit the scope of the unit further.[3] Jackson added that "there was some discussion of the clerks and all and I informed him that there was no request for recognition of the clerks, that we did not historically negotiate for clerks." Haddad refused Jackson's several requests for recognition and negotiation of a contract, stating each time, "No comment."

Thereafter on October 12 or 13, in the course of a conversation with Haddad concerning the reinstatement of a recently discharged employee (*infra*, p. 5) Jackson again asked for recognition and bargaining and Haddad again refused.

2. *Interference, restraint and coercion of employees.*

Immediately following Haddad's conference with Jackson on October 9, Warehouse Manager Roy Foy called a meeting of the warehouse employees. Haddad addressed the group on this occasion telling them he was surprised at their selection of the Union and asking them as a group what it could do for them, pointed out to them the things he could do regardless of unionization. Thus he explained that he did not have to guarantee a 40-hour week, and that he could require

[3] Ivan Vickers credibly testified that at an employee meeting later the same day Haddad stated he did not believe the Union could win an election because the warehouses of all five stores would be involved.

the men to work split shifts. He then singled out an employee in the group, Charles Lewis, and asked him if he had signed a Union application. Lewis replied that he had not. Haddad concluded his remarks by assuring the employees that anyone could withdraw from the Union if he wished and that Respondent would not discharge anyone for joining.[3]

On the next day, October 10, Harry Turner, also known as Junior Turner, Department Head of Housewares at the Charleston store, drove to the Nitro warehouse, sought out Employee S. D. Nelson and invited him to his car in the parking lot where the two talked, at some length. In the course of this conversation Turner asked him to verify the fact that he and another employee, Woodall, had joined the Union. According to Turner himself, whom I credit, he said:

[3] When Personnel Manager Darnell addressed the meeting, he stated that FMC, a local industry, was in the midst of a strike, and if it were forced to move out of town Respondent's business would suffer. Counsel for General Counsel contends that this statement on the part of Darnell supports an allegation in the complaint (Par. 5(b)(i)) that the statement, coupled with another to the effect that unionization of Respondent's operations would reduce its discount potential and business, constituted an unlawful threat. There is nothing in the record to indicate that Darnell made any reference to the reduction of Respondent's discount potential.

Actually it was Warehouse Manager Foy, according to Goins, who made the statement in question, specifically that Heck's could not operate with a union and continue as a discount house. At the hearing counsel for the General Counsel was apprised of the fact that the complaint contained no allegation of statements attributable to Foy, an admitted supervisor, and he replied that "this does not go directly to any allegation of the complaint." Under such circumstances, I believe that Respondent was relieved of an obligation to refute the statement or to otherwise litigate the issue. Accordingly, I will not consider the Foy statement in any conclusion I make herein.

We got to talking about the union. I got to telling him the good points that we had at the store and what the company could do if they wanted to. They didn't have to give us the bonus and they didn't have to have these parties for us and stuff like that. I was explaining the good points to him about it.

* * * * *

Q. Did you make any threats or promises to him as to what would happen if he did or did not join the union?

A. I told him what could happen. The company could cut our raises off, cut it off short, and stuff like that. It was to your own advantages. And our vacations.

* * * * *

Q. Did you tell Mr. Nelson that if the union was voted in that the company would discontinue granting bonuses or reduce the work hours of the employees?

A. No. I said they could.

Q. Did you tell Mr. Nelson that you knew that he and another man, Mr. Woodall, had signed union cards for the union?

A. Yes, sir. (Tr. 207–209

A week later, on October 17, Employee S. D. Nelson had another significant conversation, this time with President Haddad who summoned him to his office. After telling Nelson he had seen his union card among those presented by Jackson (*supra*) Haddad offered him a salaried job of $325 per month if Nelson would help "break up the union in the St. Albans store." When Nelson refused Haddad then asked if he believed he was due for a raise. Nelson expressed doubt because of his union activity whereupon Haddad sent for Personnel Manager Darnell and the two of them checked out a list and stated their conclusion that Nel-

son was not due for his raise. Then Darnell said, "I wished that you could be on our side."[4]

A week later, on October 23, Haddad made the same proposition to Ivan Vickers who, unlike Nelson accepted it. Haddad sent for Vickers and in the presence of Personnel Manager Darnell and Merchandise Manager Ellis complimented him upon his work and said he wanted to make a "deal" with him. The "deal" was to put Vickers on a $350 per month salary to help break up the Union by exerting his influence over his fellow workers.[5]

The foregoing statements and incidents portray a pattern of interference, restraint and coercion of employees. Thus Respondent, through its officials and supervisors, in reprisal for the employees joining the Union, threatened to cut this workweek, and, tantamount to a threat in each case, stated that it *could* withdraw bonus payments, eliminate company parties and cut off raises. Similarly, and during the same period it publicly interrogated Employee Lewis concerning his union membership, and sought to bribe Employee S. D. Nelson to work against the Union.[6] Citation of authority is unnecessary to establish that such conduct violates Section 8(a)(1) of the Act and I so conclude and find.

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[4] The credited testimony of Employee Nelson. Neither Haddad nor Darnell denied the conduct or statements attributed to them.

[5] The credited testimony of Vickers. Ellis was not questioned about the incident. Haddad and Darnell both corroborate the details of Vickers' transfer to salary status, and Haddad denies any reference was made to the Union. I do not accept Haddad's denial. Darnell testified simply that nothing was said about the Union "to his recollection." I do not accept this as a denial on his part.

[6] In view of my finding that Employee Vickers is a supervisor (*infra*) I make no finding as to whether the successful bribing of him for the same purpose is violative of the Act.

3. *The discharge of James Goins.*

On the following morning, Saturday, October 10, Employee James Goins was assigned the duty of washing down the warehouse driveway with a fire hose and in the course of it became water soaked to an extent that is in serious dispute. Goins testified he was "sopping wet" from the shoulders down, as the consequence of wielding a leaky nozzle. Ivan Vickers testified merely that he was wet, whereas Goins' supervisor, Graley, testified that Goins' clothing was wet for a distance of 18 inches above the floor.[7] A synthesis of the testimony does establish, then, that Goins was wet and that his request to go home had factual justification. Whereupon, having requested and obtained Supervisor Foy's permission to leave, he did so. Upon his return on Monday, October 12, Goins found his timecard missing from the rack. He questioned Foy who first told him that he had left on the previous Saturday without permission and then stated that his work had been unsatisfactory during his 90-day probation period and that they were going to have to let him go.

The foregoing findings are based on the credited testimony of Employee Goins. I do not accept Supervisor Graley's testimony as credible, having observed him on the witness stand. Throughout his testimony he was hesitant and evasive, and on a number of occasions completely confused, all to such an extent that he inspired no confidence whatever in his testimony respecting Goins. As an example of Graley's confused testimony I would cite his insistence that he knew nothing at all about the Union campaign. It had been credibly testified to by both Goins and Vickers with-

[7] Dependent upon the length of the leg involved this would place the high water mark somewhere between Goins' calf and knee.

out contradiction, however, by any of Respondent's witnesses that President Haddad had called an employee meeting on October 9, following Jackson's request for recognition, and that Darnell and Graley were present and had spoken to the men. Under such circumstances Graley's professed ignorance of Union matters cannot be accepted. Accordingly I reject all of Graley's testimony, and particularly his testimony that he smelled alcohol on Goins' breath on several occasions, and that this was why he reported him to Foy on Saturday, October 10. Not discounting the possibility that Goins may well have exuded an odor comparable to alcohol, which could have been anything from bonbons or beer to mouthwash, Graley did not impress me as one capable of making a refined judgment in such matters. Judging from the manner in which he conducted himself when confronted with questions concerning this subject on cross-examination, indeed a complete unwillingness to give a straight-forward answer, I conclude and find that his story was a fabrication.

I can give no more credence to the report as it comes from Personnel Manager Darnell, who approved Goins' discharge. Thus Darnell testified that Supervisor Foy, in reporting the details of the entire incident to him, included Graley's report that he had smelled alcohol on Goins' breath. Darnell's testimony becomes, at best, hearsay twice removed,—and specifically, hearsay whose source I reject at the outset. I accordingly reject any suggestion in the record that Goins was ever known to have indulged in alcoholic beverages to excess or that he had the odor of such on his breath.[8]

[8] It is significant to note that Goins testified credibly that he does not drink, and that Foy, the supervisor who discharged him, has himself been discharged and cannot be located to testify.

Upon the foregoing facts and conclusions certain other conclusions emerged. Thus it appears that Goins, who had permission to leave was discharged (1) for leaving, (2) for unsatisfactory performance that was unsubstantiated on the record, and (3) inferentially for conduct, if such we may classify bad breath, that was never proven. Occurring as it did on the day following the Union's request to bargain *after* which Respondent's officials engaged in conduct which I have found to constitute unlawful interference, restraint and coercion I have no hesitation in concluding that Foy, the missing supervisor, with Darnell's knowledge, dismissed Goins for the reason that he was known, by Haddad's inspection of union cards, to be a member of the Union and, by the proximity in which he worked with such supervisors as Graley and Foy, to be the one who was soliciting Union memberships.[9] In so concluding I further find and conclude that the reasons suggested by Respondent, unsubstantiated and conflicting as they are, are but pretexts to mask Respondent's true purpose, its attempt to thwart the Union's campaign. Such conduct has consistently been held to constitute discrimination in violation of 8(a) (3) and (1) and I so find and conclude here.

4. *The failure to reinstate Ivan Vickers.*

Ivan Vickers, who has figured prominently in the Union activity described heretofore, is claimed by Respondent to be a supervisor. To this end it adduced considerable evidence in support of its contention, through testimony of President Haddad, Darnell, and Ellis. Moreover, Vickers himself testified that prior to his transfer to the Nitro warehouse he had been manager of Respondent's Lewis Street warehouse and

[9] *Wiese Plow Welding Co., Inc.*, 123 NLRB 616.

while claiming he did not consider himself to be a supervisor at Nitro because he "wasn't in charge of the warehouse," he was told he was in charge of shipping and he did, in fact, assign warehouse employees to loading and unloading trucks and directed them in filling orders. He also attended supervisory meetings. Accordingly, based upon Vickers' own description of his duties as they existed both before and after his Nitro assignment, I conclude and find him to be a supervisor within the meaning of the Act.

On December 3, 1964, Vickers left Respondent's employ to enlist in the United States Air Force. Thereafter, on December 31 he was granted a temporary medical discharge from the service and immediately sought to return to Respondent's employ. He called Merchandising Manager Ellis who took his telephone number and assured him "he thought it would be fine" and would check with Personnel Manager Darnell. Ellis never called back and Vickers heard nothing further. Ellis' testimony lends confusion to the situation. Thus he stated that he *either* referred Vickers to Darnell or said he would check with Darnell, *or* that Vickers should come in and see them. Under such confused circumstances Ellis' testimony is of little value and I rely completely upon Vickers' account. Vickers was returned to his job in March upon the intervention of officials of the United States Veterans Administration. General Counsel alleges Respondent's refusal to recall Vickers during the intervening period to be discriminatory in violation of Section 8(a)(3) of the Act.

Common prudence would suggest that an employee do something more than make a telephone call to secure the reemployment rights due him upon return from military service. Here Vickers, by his own admis-

sion, did nothing more and was content to wait for the two or three months during which the governmental wheels turned sufficiently to obtain his job for him. Under these relaxed circumstances I am not disposed to equate Vickers' disinterest with a manifestation of Respondent's discriminatory motive. If, indeed, Respondent was disposed to discriminate against him, Vickers at least had the obligation to establish a case in his own behalf. Sitting upon any rights he may have thought he had is a far cry from this. I accordingly conclude and find upon the record made by Vickers himself that he was not being deprived of employment as a supervisor[10] during the period in which he blithely waited for someone to return his telephone call. I therefore recommend that so much of the complaint as alleges discrimination against Ivan Vickers in violation of Section 8(a)(3) be dismissed.

5. *The alleged refusal to bargain.*

It is clear from the testimony of Union Representative Jackson, General Counsel's own witness, that President Haddad questioned the scope of the bargaining unit when Jackson requested bargaining on October 9. Thus Haddad told Jackson he had warehouses other than the three whose employees' cards were presented him. In elaboration Jackson testified:

> Mr. Haddad said that he had warehouses in all his stores and as a result questioned the unit. However, I told him that I was amenable to negotiate either on behalf of the Nitro Warehouse or separate contracts for the warehouses in the stores. (Tr. 35)

[10] Assuming, contrary to any conclusion herein, that the equities preponderated in Vickers' favor in this matter, it is well established that an employer may lawfully refuse to rehire a former supervisor who applies for a supervisory position. *Pacific American Shipowners Assn.*, 98 NLRB 582, 596.

At this juncture none of the events which I have detailed above, and have found to constitute violations of the Act, had occurred. Under usual circumstances it would be appropriate to inquire, therefore, whether Haddad's refusal in this context was or was not a good faith doubt, particularly in view of his and associates' subsequent conduct. But these do not appear to be usual circumstances and it would seem that as there is so much confusion surrounding the identity and composition of the unit—as sought initially by Jackson, as understood by Respondent, and as urged by General Counsel—that the element of good faith refusal to bargain in a unit appropriate for bargaining need never be reached.

Jackson concededly requested bargaining in behalf of the drivers and warehousemen at the Nitro, St. Albans, and Charleston warehouses and three days later filed a petition for an election in the same unit. Nevertheless, as quoted above, he expressed a willingness at the time *not to be bound* by the scope of the unit he requested.[11] General Counsel, on the other hand, in a consolidated complaint initially issued on April 22, 1965, alleged as the appropriate unit all truckdrivers and warehousemen at Respondent's Nitro warehouse and St. Albans store, with the usual exclusions, and by a June 3 amendment added to this unit the same classifications employed at Respondent's

[11] Cf. *Sportswear Industries, Inc.*, 147 NLRB 758, wherein the Board, at p. 760, stated:

"Once having defined the unit it claims to represent, and having made a demand on that basis, the Union has thereby established the frame of reference for measuring the validity of its demand. 'Such a requirement imposes on the union representative only the obligation to say what he means. Failing to do so [the union] cannot be considered as having made the sort of request to bargain which imposes upon an employer a legal obligation to comply' (footnote omitted)."

Charleston "store and warehouse." And finally by a document introduced into the record by counsel for the General Counsel entitled "Warehouse Employees" it is claimed that those employees listed thereon as Truck Drivers or Warehousemen at Nitro, St. Albans, and Charleston warehouses constitute the total eligibility list, plus Employee Goins who had been discharged by that time (*supra,* pp. 5–7) and was therefore not on the list. For reasons which follow the total number of employees eligible for inclusion in the unit cannot be precisely determined.

It should now be noted that a distinction exists on the so-called eligibility list between "Drivers and Warehousemen" and other classifications such as "Pricer" and "Receiving Clerk," both of whom General Counsel explicitly stated he would exclude from the unit. This distinction becomes dim, however, at certain points and to such an extent that the terms "Warehouseman" and "Warehouse Employees" are used interchangeably. Thus when Jackson was asked by me to repeat precisely the unit for which he was seeking recognition he stated to me, "Truckdrivers and warehouse employees." And when counsel for General Counsel introduced what, upon refinement, becomes the eligibility list, he referred to it as "a list of the warehouse employees." While it is true that after considerable probing on my part the purpose of this list was clarified as being relevant only had it contained the names of all the drivers and warehousemen at the three designated warehouses, nonetheless it is significant to note that ambiguity certainly attended the proceedings at this point.

Upon further development of the evidence as to the appropriate unit other elements of confusion appear. Thus, although General Counsel stated specifically that Pricers "were not to be included in the unit,"

his own witness, Franklin T. Lanham, corroborated Personnel Manager Darnell's undenied testimony that the duties of the male Pricers differed little, if any, from those of "Warehousemen," the difference being that in addition to loading and unloading trucks and stocking shelves, as do Warehousemen, the Pricers also mark the merchandise. Female Pricers are not required to do the heavy work, it being performed by the Warehousemen.

Nor does the election petition filed by the Union on October 12, 1964, add clarity. Thus, while giving the several addresses of the Employer in one section of the petition form it describes the union requested as "all employees of the Employer employed *at its places of business* as warehousemen and truckdrivers" [emphasis added].

Finally, as the hearing progressed and in the course of determining the unit eligibility of an employee in one of the warehouses (Anna Lou Adkins) counsel for the General Counsel was reminded that the employee whose card was being discussed was a "Pricer," the category previously excluded from the unit by counsel's earlier statement of position. In reply counsel stated to me:

> I am aware of that, sir. But I still have this problem of what the final unit determination is going to be. (Tr. 162)

And earlier in the record when asked by me to clarify the duties of an allegedly eligible employee to determine his inclusion as a Warehouseman counsel stated:

> I am aware of the problem you would have with this. But at the same time I am aware that we are concerned with the situation that the appropriate unit has not actually been determined as of this time. (Tr. 135)

Upon the foregoing conglomeration of scanty data the Board, through me, is being asked to conclude that the Union represented the majority of the Respondent's employees in a unit appropriate for bargaining and that President Haddad's refusal to bargain, as detailed above, was not grounded in good faith either as to his doubt of the majority, or of the appropriateness or scope of the unit requested, or both.

Section 9 of the Act provides the framework for the laboratory conditions which the Board deems so essential for the determination of employee representation. Through appropriate rules of decision and its regulations[12] procedures have historically been availed of to provide a forum to assess the duties of those sought in a bargaining unit, the extent of the unit's scope, and a myriad of complications that must be resolved to achieve a reasonable determination of the unit in which a fair election is to be held; all of this through the orderly participation and contribution of both employer and union representatives. Similarly in the conduct of the election itself, wherein eligible employees are permitted the privacy of their choice, safeguards are provided in the form of challenge available to all parties to insure that eligibility is maintained and that irregularity is eliminated.

With all due respect to able counsel participating in this proceding and with full recognition of my own procedural limitations I fail to see how the materials presented in evidence here provides an adequate substitute for the orderly procedure and determination customarily available.

The essence of this case is twofold: that Jackson claimed a majorty in an appropriate unit, and that Haddad's refusal was or was not in good faith. As to

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[12] See Rule and Regulations, Series 8, as amended, Sec. 102.61 *et seq.*

the former, upon full consideration of evidence presented and the conflicts this evidence contains, I am persuaded that General Counsel has failed to meet the burden of establishing what precisely was the appropriate unit in which the Union had its majority. Failing in this respect and thus creating for me an unresolved doubt concerning the unit, I am not disposed to conclude that Respondent's refusal or *its* doubt was any less reasonable, particularly when this refusal rested, at least in part, upon the fact that Respondent had in its employ warehousemen not included in the unit requested.

Upon all of the foregoing considerations, therefore, I would recommend that so much of the complaint as alleges Respondent's refusal to bargain be dismissed.

V. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of the Respondent set forth in section IV, above, occurring in connection with its business operations described in section I, above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States, and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

VI. THE REMEDY

Having found that Respondent has engaged in unfair labor practices I shall recommend that it cease and desist therefrom and, because of the gravity of its conduct I shall also recommend that it cease and desist from infringing in any other manner upon the rights of employees guaranteed by Section 7 of the Act.[13]

[13] *N.L.R.B.* v. *Express Publishing Co.*, 312 U.S. 426, 433.

Affirmatively I shall recommend that James Goins, whom it discriminatorily discharged, be reinstated to his former or substantially equivalent position, if this has not already been done, without prejudice to seniority or any other rights and privileges, and that he be made whole for any loss of earnings suffered by him because of Respondent's discrimination against him, with backpay computed by access to the Company's books, records and accounts, and in the customary manner,[14] with interest added thereto at the rate of 6 percent per annum.[15]

Recommended Order

Upon the entire record in this case, and pursuant to Section 10(c) of the National Labor Relations Act, as amended, I Recommend[16] that Heck's Inc., its officers, agents, successors and assigns shall:

1. Cease and desist from:

(a) Unlawfully interrogating employees concerning their union membership, activities or desires.

(b) Threatening their employees with reprisals if they select the Union as their representative.

(c) Offering or granting their employees wage increases and/or promotions in exchange for their active opposition to the Union.

(d) Discharging or otherwise discriminating against employees in respect to hire and tenure of employment for the purpose of discouraging union membership or engaging in concerted activities.

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[14] *F. W. Woolworth Co.*, 90 NLRB 289.

[15] *Isis Plumbing & Heating Co.*, 138 NLRB 716.

[16] In the event that this Recommended Order be adopted by the Board, the word "Recommended" shall be deleted from its caption and wherever else it thereafter appears; and for the words "I Recommend" there shall be substituted "The National Labor Relations Board Hereby Orders."

(e) In any other manner interfering with, restraining, or coercing employees in the exercise of their rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action which will effectuate the policies of the Act:

(a) Offer immediate and full reinstatement to James Goins to his former or substantially equivalent position and make him whole in the manner set forth in the section of the Trial Examiner's Decision entitled "The Remedy."

(b) Post at its Nitro, St. Albans and Charleston, West Virginia stores and warehouses copies of the notice attached hereto as "Appendix." Copies of said notice to be furnished by the Regional Director for the Ninth Region shall after being duly signed by the Respondent, be posted immediately upon receipt thereof, in conspicuous places, including places where notices to employees are customarily posted, and be maintained by it for a period of 60 consecutive days thereafter. Reasonable steps shall be taken to insure that said notices are not altered, defaced, or covered by any other material.

(c) Notify said Regional Director in writing within 20 days from the receipt of this Decision what steps the Respondent has taken to comply therewith.[17]

(d) Notify James Goins, if presently serving in the Armed Forces of the United States, of his right to full reinstatement upon application in accordance with the Selective Service Act and the Universal Military Training and Service Act of 1948, as amended, after discharge from the Armed Forces.

[17] In the event this Recommended Order is adopted by the Board, this provision shall be modified to read: "Notify said Regional Director in writing within 10 days from the date of this Order what steps the Respondent has taken to comply herewith."

It is FURTHER RECOMMENDED that so much of the complaint in this proceeding as alleges unlawful discrimination against Ivan Vickers and Respondent's unlawful refusal to bargain with the Union be dismissed.

Dated at Washington, D.C.

THOMAS F. MAHER,
Trial Examiner.

APPENDIX

NOTICE TO ALL EMPLOYEES

Pursuant to the Recommended Order of a Trial Examiner of the

NATIONAL LABOR RELATIONS BOARD

and in order to effectuate the policies of the

NATIONAL LABOR RELATIONS ACT

we hereby notify our employees that:

WE WILL NOT unlawfully interrogate our employees concerning their union membership, activities, or desires.

WE WILL NOT threaten our employees with reprisal for engaging in union activities or for supporting CHAUFFEURS, TEAMSTERS AND HELPERS, LOCAL UNION NO. 175, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, or any other labor organization.

WE WILL NOT offer or grant our employees wage increases and/or promotions in exchange for this opposition to the aforesaid union.

WE WILL NOT discharge, or otherwise discriminate against our employees in respect to hire or tenure because they are leaders in the aforesaid union or have participated in con-

certed activities protected by Section 7 of the National Labor Relations Act.

WE offer immediate and full reinstatement to his former or substantially equivalent position to James Goins, and WE WILL make him whole for any loss of pay he may have suffered, in the manner set forth in the section of the Trial Examiner's Decision entitled "The Remedy."

WE WILL notify James Goins, if presently serving in the Armed Forces of the United States, of his right to full reinstatement upon application in accordance with the Selective Service Act and the Universal Military Training and Service Act of 1948, as amended, after discharge from the Armed Forces.

WE WILL NOT in any other manner interfere with, restrain or coerce our employees in the exercise of rights guaranteed them by Section 7 of the Act.

All of our employees are free to become or refrain from becoming members of the above-named union, or any other labor organization.

HECK'S, INC., *Employer.*

Dated: _____ By: _____
(Representative) (Title)

This Notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced, or covered by any other material.

If employees have any question concerning this Notice or compliance with its provisions, they may communicate directly with the Board's Regional Office, Room 2023 Federal Office Building, 550 Main Street, Cincinnati, Ohio 45202 (Tel. No. 684-3627).

320-064—68——8

United States of America, Before the National Labor Relations Board, Division of Trial Examiners, Washington, D.C.

Cases Nos. 9–CA–3356, 3477

HECK'S INC.

and

CHAUFFEURS, TEAMSTERS AND HELPERS LOCAL UNION NO. 175, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA

William C. Mittendorf, Esq., of Cincinnati, Ohio, for the General Counsel; *Gardner, Gandal & Holroyd*, by *Fredrick F. Holroyd, Esq.*, of Charleston, W. Va., and *George V. Gardner, Esq.*, of Washington, D.C. for the Respondent; *Pottenbarger & Bowles*, by *Martin C. Bowles, Esq.*, of Charleston, W. Va., for the Charging Union.

Before: THOMAS F. MAHER, Trial Examiner

TRIAL EXAMINER'S SUPPLEMENTAL DECISION

Statement of the Case

On November 30, 1965, a Decision was issued by me in this proceeding finding and concluding that Respondent herein, Heck's Inc., had not unlawfully refused to bargain collectively with Chauffeurs, Teamsters and Helpers, Local Union No. 175, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, herein referred to as the Union Company, and I accordingly dismissed the Section 8(a)(5) allegation, for the reason that the General Counsel had failed to meet the burden of

establishing what precisely was the appropriate unit in which the Union had its majority. In addition, I made certain findings of violations of Section 8(a) (1) and (3) of the Act and recommended that specified remedial action be taken with respect thereto. The case was transferred to the National Labor Relations Board, herein called the Board, on the same day. Thereafter counsel for the General Counsel and Respondent filed exceptions to my Decision and counsel for the General Counsel filed a brief in support of his exceptions.

In due course the Board, upon review of my Decision, the exceptions, supporting briefs and the record, on March 23, 1966 issued its Order Reopening Record and Remanding Proceeding to Regional Director for Further Hearing. The Board found "on the basis of the entire record that the General Counsel was plainly contending that the appropriate unit consisted of all truckdrivers and warehouse employees at the Nitro, St. Albans and Charleston warehouses" of the Respondent. It ordered that the hearing be reopened for the purpose of adducing additional evidence concerning the nature and appropriateness of the bargaining unit, the majority status of the Union, and the alleged refusal of the Respondent to bargain with it, and directed that I prepare and serve upon the parties a Supplemental Decision containing findings of fact, conclusions of law and recommendations to the Board based upon the evidence contained in the entire record.

Pursuant to notice issued on September 28, 1966, by the Regional Director a further hearing was held before me in Charleston, West Virginia. All parties appeared and were afforded full opportunity to be heard, to adduce relevant evidence, to examine and cross-examine witnesses, to present oral argument and to file briefs. Briefs were filed with me on Decem-

ber 15, 1966, by counsel for Respondent and the General Counsel.

Upon the entire record, including the evidence adduced at both the original and subsequent hearings, and all briefs submitted by the parties, I make the following:

Findings of Fact and Conclusions of Law

A. THE SCOPE OF THE REMAND

In its Order of Remand the Board specifically found "on the basis of the entire record that the General Counsel was plainly contending that the appropriate unit consisted of all truckdrivers and warehouse employees of the Nitro, St. Albans and Charleston warehouses," these being the three stores and warehouse locations established in the Charleston area, and discussed and identified in further detail in my original Decision.[1]

Because the Board deemed the record before it inadequate "to determine the unit and majority questions" I have been directed to adduce evidence as to (1) whether the unit sought by the Union was in fact "appropriate" for the purposes of collective bargaining, (2) whether the Union represented a majority of employees in said unit, (3) whether the Respondent's refusal in said unit was lawful.

B. THE UNIT CLAIMED BY GENERAL COUNSEL

As determined by the Board in its Order of Remand the General Counsel contends that the unit appropriate for collective bargaining herein consisted of

> All truckdrivers and warehouse employees at the Nitro, St. Albans and Charleston ware-

[1] Reference to my original Decision at a designated page will be indicated herein as TXD, p. 6.

houses, excluding office clericals, guards, professional employees and supervisors as defined in the Act, and all other employees.[2]

C. THE APPROPRIATE UNIT

In response to the Board's inquiry in its Order of Remand as to the appropriateness of the bargaining unit sought by the Union there is a basic difficulty. It has not been established by the record that when the Union made its demands it did so in a given unit. Thus, as previously found, Union Representative Jackson credibly testified at one point

> Mr. Haddad said that he had the warehouses in all his stores and as a result questions the unit. However, I told him that I was amenable to negotiate either on behalf of the Nitro Warehouse or separate contracts for the warehouses in these stores. (Tr. 35)

Prescinding from this for purposes of determining the appropriateness of the unit which the General Counsel contends for, that unit may be identified as comprising the employees at the several warehouses of the Respondent's retail chain stores located in the Charleston, West Virginia, geographical area.

As to the retail stores themselves it is settled that all of such located in a geographical area may constitute a single bargaining unit.[3] It is equally well settled that a unit of employees in the retail industry engaged in warehouse functions, including the truckdrivers,

[2] The excluded categories were not set forth in the General Counsel's original contention but appeared for the first time in his most recent brief to me. At the further hearing counsel for the General Counsel indicated on the record as intent to set forth an alternate unit position. As the Board has specifically ruled on the nature of the unit being contended for I precluded counsel from further discussion of alternatives.

[3] *Sav-On Drugs Inc.*, 138 NLRB 1032.

constitutes an appropriate bargaining unit.[4] *A fortiori,* two or more groups of employees constituting all of the employer's warehouse employees in the geographical area would likewise constitute an appropriate unit.

The record in the instant proceeding discloses that in the respective warehouses there is a complete separation of functions of the warehouse employees and the selling personnel, and no interchange between either group. Thus the respective warehouse areas are completely partitioned off from the selling areas, inter-access being by door; the individuals employed in the warehouse are separately supervised there; they perform the usual warehousing functions such as a truck unloading, unpacking, pricing, storing, and the delivery of items to the selling floor. There is, however, a dispute as to whether certain Pricers should be included in the unit, it being stipulated, nevertheless, that those at the Nitro store be included. The General Counsel would exclude the Clothing Pricers at the St. Albans and Charleston warehouses, Employees Taylor and Russe, while on the other hand the Company would include them. Everyone agrees the Pricers at Nitro should be included. Both Taylor and Russe, each of whom price clothing exclusively, work in warehouse areas, but in each case in a section partitioned off from the rest of the warehouse. In the course of their duties each of them receive pricing instructions from the supervisor of the Clothing Department. Each employee is carried on Respondent's personnel records as a warehouse employee and there is no evidence that they are engaged in selling functions as part of their usual duties.

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[4] *The May Department Stores Company*, 153 NLRB 341; *Loveman, Joseph and Loeb*, 152 NLRB 719.

From the credited testimony of Employees Larry Woodall and Doyle Thornton, called as witnesses by the General Counsel, and of Personnel Manager Ray Darnell, it is clear that except for the segregated work areas provided for Clothing Pricers at each warehouse the nature of their duties does not differ substantially from that of other pricers, and indeed the separation at St. Albans was explained by the existence of such a separate room in the warehouse when first the building was acquired. Certainly the inherent character of clothing merchandise should itself explain why warehousing it separately from the general stock would be prudent practice, avoiding soilage and spoilage. And finally it is evident that the instructions which the Clothing Pricers receive from the Clothing Department supervisors would constitute a reasonable source of pricing information. Nor is there anything in the record to suggest why the Clothing Pricers at two warehouses should be treated differently from those at the third warehouse, Nitro.

Upon review of all of the foregoing considerations it is apparent that the elements of community of interest and integration of the Clothing Pricers at St. Albans and Charleston with the other warehouse employees are not lessen by any routine contacts these employees may have with personnel in other areas of the store anymore than would the truckdrivers' like community of interest be destroyed by their regular absence from the warehouse, driving about the city. On the contrary, the Pricers in question, both female employees, have warehouse supervision, do the same general type of work, excepting the heavy lifting, wear clothing appropriate to their duties, and associate occupationally with the warehouse employees, meeting with others only on an "emergency" or sporadic basis. I would

therefore conclude and find that *all* Pricers are appropriately a part of the warehouse unit.

Upon all of the foregoing I would conclude and find as a unit appropriate for the purposes of collective bargaining

> All truckdrivers and warehouse employees, including all pricers at the Nitro, St. Albans and Charleston warehouses, excluding office clericals, guards, professional employees and supervisors as defined in the Act, and all other employees.

D. MAJORITY STATUS OF THE UNION IN THE ABOVE-DESCRIBED UNIT FOUND TO BE APPROPRIATE

As previously found by me (TXD, pp. 2–3), by October 9, 1964, thirteen employees in the three warehouses had signed cards authorizing the Union to represent them and submitted them to Union Representative Jackson. These cards presented to President Haddad as evidence of the Union's claim and inspected by him were for the following:

Charles D. Curry
Charles G. Ferrell
James E. Goins
Edward L. Hughart
Richard Johnson
Franklin T. Lanham
James A. May
Opie G. Nelson
Samuel D. Nelson
Virgil R. Searls
Doyle Thornton
Ivan L. Vickers
Larry Woodall [5]

[5] Everett Nichols, Warehouse Clerk, and Anna L. Adkins, Cosmetic Pricer, signed the cards on October 10 and 13 respectively. Obviously these were not included among the cards submitted to Haddad.

All cards received in evidence were identified by the respective employees or by Jackson in whose presence they were signed. There is no contest as to either their authenticity or to the fact that each was signed for the purpose of selecting the Union as bargaining representative.

As I have previously found and concluded that Ivan Vickers was a supervisor at all relevant times herein (TXD, p. 7) his card cannot be included among those cards availed of by the Union to support its claim of majority status on October 9. I accordingly conclude and find that upon that date, on the occasion of Union Representative Jackson's request of President Haddad that Respondent bargain with the Union (TXD, p. 3), the Union represented 12 employees, as evidenced by cards in its possession.

As a means of establishing the composition of the bargaining unit claimed by General Counsel to be appropriate a list of warehouse employees at Nitro, St. Albans and Charleston, supplied by Respondent, was admitted into evidence. The list is as follows, excluding four individuals, Graley, Vickers, Elbert Ferrell, and Overton, who have either been found by me or stipulated to be supervisors:

Nitro, West Virginia:

Anna Lou Adkins	Pricer.
James A. Cooper	Warehouseman.
Charles D. Curry	Warehouseman.
Charles F. Ferrell	Warehouseman.
Sheila V. Hostein	Pricer.
Richard Johnson	Driver.
Earl Keeney	Driver.
Franklin T. Lanham	Pricer.
Charles E. Lewis	Pricer.
James A. May	Warehouseman.
Opie Nelson	Warehouseman.
Dallas T. Queen	Warehouseman.
Virgil Searls	Warehouseman.
Lloyd J. Slack	Driver.
Roger Stackey	Warehouseman.

St. Albans, West Virginia:

Wayne Baker	Warehouseman.
Samuel D. Nelson	Warehouseman.
Everett Nichols	Warehouseman.

Evelyn Taylor	Pricer.
Larry Woodall	Driver.
Charleston, West Virginia:	
Charles G. Ferrell	Warehouseman.
Edward L. Hughart	Driver.
Ernestine Russe	Pricer.
Doyle Thornton	Warehouseman.

A tabulation of this list indicates that there are a total of 24 eligible employees in the bargaining unit claimed by General Counsel and found by me to be appropriate.

Of the foregoing it is apparent that on October 9, 1964, when Union Representative Jackson presented the cards for Supervisor Vickers and the 12 warehouse employees to President Haddad and requested recognition and bargaining the Union represented only 12 of the 24 eligible rank-and-file employees in the unit which I find herein to be appropriate. It did not *at that time* represent a majority.

E. SUBSEQUENT ACTIVITY RELATING TO THE BARGAINING UNIT

Two more cards came into the possession of the Union after it had shown the original group of cards to Haddad; the cards of Nichols and Adkins, signed on October 10 and 13, respectively. Meanwhile a number of events had transpired. Harry Turner, Department Head of Housewares at Charleston, engaged in conversations on the following day, October 10, which I have already found to contain unlawful threats to cancel wage increases and discontinue bonuses if the Union got in. (TXD, pp. 4–5). A week later President Haddad offered a promotion to one of the employees who had joined the Union on condition that the employee would agree to work against the Union (TXD, p. 5). And again a week later he offered a

similar inducement to Supervisor Vickers for the same purpose (TXD, pp. 5, 7). These incidents I have already found to constitute unlawful interference, restraint and coercion. Additionally I found that on October 10 Respondent discriminatorily discharged Employee James Goins (TXD, pp. 5–7).

Meanwhile, on October 12, the Union filed its petition in Case No. 9–RC–6097, later withdrawn, seeking an election among

> all employees of the Employer employed at its places of business as warehousemen and truckdrivers; excluding all office clerical employees, all guards, professional employees and supervisors, and any others excluded in the Act, as amended.

The petition indicates the Union's belief that there were 19 employees in the bargaining unit, and it makes no reference to Pricers, all of whom I have found (over General Counsel's objection as to those in St. Albans and Charleston) to be included in the appropriate unit (*supra,* p. 4).

While it is evident that the Union did not have a majority of the 24 employees when it requested recognition on October 9 it did achieve this majority on October 10, with Nichols' card, and it increased it by one more with Adkins' card on October 12. If, then, on October 10, and thereafter, the Union continued to claim recognition the issue of Respondent's refusal becomes a real one indeed.

During the week after his initial request for recognition, "about the 12th or 13th of October," Jackson, as I have already found (TXD, p. 4), in the course of seeking the reinstatement of the discharged Employee Goins (TXD, p. 5), asked President Haddad a second time to recognize and bargain with the Union, and again received the same reply: "No comment."

I would conclude and find that Jackson's request for recognition first made on October 9, 1964, became a continuing request thereafter for the reason that (1) it was followed by the filing of a representation petition the next day,[6] (2) it was followed immediately by an effort on the part of Supervisor Turner to procure defections from the Union, and finally (3) on October 12, a new request was made of Haddad by Jackson and refused, to be followed thereafter by Haddad's efforts to induce union members to defect from the Union.

In summary, therefore, it is apparent that during the pendency of its claimed majority status prior to October 12, the Union possessed the cards of 13 of the total complement of 24; and that after October 13, upon receipt of Adkins' card and after Jackson's second request for bargaining, and at a point when a further request would be deemed futile,[7] I would conclude and find that in support of its continuing demand for recognition the Union then had 14 valid designation cards, of a possible total of 24, in its possession. Thus there is conclusive evidence that during the period in question the Union had established and maintained its majority status in a unit which I find to be appropriate for the purposes of collective bargaining.

F. THE LEGALITY OF RESPONDENT'S REQUEST TO BARGAIN

Jackson's demand of Haddad for recognition has, at first glance, the appearance of a flexible one. Thus

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[6] See *Ivy Hill Lithograph Co.*, 121 NLRB 831, 835, fn. 13; *Automotive Supply Co., Inc.*, 119 NLRB 1074.

[7] *America Compressed Steel Corporation*, 146 NLRB 1463, enfd. 343 F. 2d 307 (C.A., D.C.).

after testifying at several points that he requested recognition and bargaining for truckdrivers and warehousemen at the *three* local facilities he then testified in response to questioning of counsel for the Union, as follows:

> Mr. Haddad said that he had warehouses in all of his stores and as a result questioned the unit. However, I told him that I was amenable to negotiate either on behalf of the Nitro Warehouse or separate contracts for the warehouses in the stores (Tr. 35).

It is true, of course, that an employer cannot be held to have refused to bargain collectively with the representative of an appropriate unit until the representative has first sought or indicated a desire to bargain for the unit.[8] Thus any variance between the unit requested and that found appropriate raises an issue in this respect. It has long been held by the Board, however, that to be fatal any variance must be a substantial one.[9] Such is not the case here. Indeed there is no variance, but rather an alternative, if even that could be spelled out. Jackson made his demand for truckdrivers and warehousemen, the latter being deemed by me to include Pricers. In an effort to accommodate he then suggested the alternative of separate contracts. But he certainly cannot be said to have abandoned his original claim. Therefore, I do not view this offer of accommodation to be the substantial variation intended by the Board and I see no other variance. Accordingly, I would conclude and find that a valid demand in the appropriate unit was made on October 9, and for reasons already stated continued thereafter.

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[8] *N.L.R.B.* v. *Columbian Enameling and Stamping Co.*, 306 U.S. 292, 300.

[9] *Barlow-Maney Laboratories*, 65 NLRB 928.

It is apparent from Respondent's intervening and subsequent conduct which I have already found to be violative of the Act (TXD, *supra*) that it was engaging in a course of conduct calculated to undermine the Union and reflected a rejection of the principles of collective bargaining. I am persuaded therefore, that its refusal to bargain with the Union as a majority representative of the employees in the unit which I have found to be appropriate was not grounded upon any element of good faith but constituted a refusal to bargain in violation of Section 8(a)(5) of the Act, thereby interfering with restraining and coercing its employees in violation of Section 8(a)(1).[10]

G. THE REMEDY

I have already found that the Respondent has engaged in certain unfair labor practices which I recommend be remedied by the issuance of an order that Respondent cease and desist from the conduct found and that it further cease and desist from infringing in any other manner upon the statutory rights of its employees and an affirmative order reinstating Employee James Goins with backpay (TXD, p. 10–12). I shall reaffirm these recommendations by appropriate reference in my Supplemental Recommendations herein. In addition, I shall recommend that Respondent bargain collectively with the Union in the unit which I have found to be appropriate for bargaining purposes, and I shall further recommend that it be required to post a notice of compliance which consolidates the matters contained in both my original and supplemental recommendations.

[10] *The Great Atlantic and Pacific Tea Company, Inc.*, 162 NLRB No. 110.

SUPPLEMENTAL RECOMMENDED ORDER

Upon the entire record in this case, and pursuant to Section 10(c) of the National Labor Relations Act, as amended, and the National Labor Relations Board's Order of Remand issued to me in this proceeding, I hereby reaffirm my recommendations contained in my Decision issued on November 30, 1965, and I further recommend [11] that Heck's Inc., its officers, agents, successors, and assigns shall:

1. Cease and desist from refusing to bargain with CHAUFFEURS, TEAMSTERS AND HELPERS, LOCAL UNION No. 175, INTERNATIONAL BROTHERHOOD OF TEAMSTER, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, as the exclusive representative of employees in the following unit found to be appropriate for the purposes of collective bargaining:

> All truckdrivers and warehouse employees, including all pricers, at the Nitro, St. Albans and Charleston warehouses, excluding office clericals, guards, professional employees and supervisors as defined in the Act, and all other employees.

2. Take the following affirmative action which it is found will effectuate the policies of the Act:

(a) Upon request bargain collectively with the above-named labor organization as the exclusive representative of all Respondent's employees in the unit found to be appropriate and, if an agreement is reached, embody such an understanding in a signed agreement.

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[11] In the event that this Supplemental Recommended Order be adopted by the Board, the words "RECOMMENDED" shall be deleted from its caption and wherever else it appears thereafter; and for the words "I RECOMMEND" or "I FURTHER RECOMMEND" there shall be substituted "NATIONAL LABOR RELATIONS BOARD HEREBY ORDERS."

(b) Post at its Nitro, St. Albans and Charleston, West Virginia, stores and warehouses copies of the notice attached hereto as "Appendix," it being a consolidation with the notice previously recommended be posted in this proceeding.[12] Copies of said attached notice to be forwarded by the Regional Director for Region Nine shall, after being duly signed by the Respondent, be posted immediately upon receipt thereof, in conspicuous places, including places where notices to employees are customarily posted, and be maintained by it for a period of 60 consecutive days thereafter. Reasonable steps shall be taken to insure that said notices are not altered, defaced, or covered by any other material.

(c) Notify said Regional Director in writing within 20 days from the receipt of this Supplemental Decision what steps the Respondent has taken to comply therewith.[13]

Dated at Washington, D.C.

THOMAS F. MAHER,
Trial Examiner.

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[12] In the event that this Supplemental Recommended Order be adopted by the Board the words "A Decision and Order" shall be substituted for the words "THE SUPPLEMENTAL RECOMMENDED ORDER OF A TRIAL EXAMINER" in the notice. In the further event that the Board's Order be enforced by a United States Court of Appeals, "A DECREE OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER" shall be substituted for the words "A DECISION AND ORDER."

[13] In the event that this Supplemental Recommended Order is adopted by the Board, this provision shall be modified to read "Notify the said Regional Director in writing within 10 days from the date of this Order what steps the Respondent has taken to comply herewith."

APPENDIX

NOTICE TO ALL EMPLOYEES

Pursuant to the Supplemental Recommended Order of a Trial Examiner of the

NATIONAL LABOR RELATIONS BOARD

and in order to effectuate the policies of the

NATIONAL LABOR RELATIONS ACT

(*as amended*)

we hereby notify our employees that:

WE WILL NOT unlawfully interrogate our employees concerning their union membership, activities, or desires.

WE WILL NOT threaten our employees with reprisal for engaging in union activities or for supporting CHAUFFEURS, TEAMSTERS AND HELPERS, LOCAL UNION NO. 175, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, or any other labor organization.

WE WILL NOT offer or grant our employees wage increases and/or promotions in exchange for this opposition to the aforesaid union.

WE WILL NOT discharge, or otherwise discriminate against our employees in respect to hire or tenure because they are leaders in the aforesaid union or have participated in concerted activities protected by Section 7 of the National Labor Relations Act.

WE offer immediate and full reinstatement to his former or substantially equivalent position to James Goins, and WE WILL make him whole for any loss of pay he may have suffered, in the manner set forth in the section of the Trial Examiner's Decision entitled "The Remedy."

WE WILL notify James Goins, if presently serving in the Armed Forces of the United States, of his right to full reinstatement upon application in accordance with the Selective Service Act and the Universal Military Training and Service Act of 1948, as amended, after discharge from the Armed Forces.

WE WILL upon request bargain collectively with CHAUFFEURS, TEAMSTERS AND HELPERS, LOCAL UNION NO. 175, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, as the exclusive representative of all the employees in the bargaining unit described below concerning rates of pay, wages, hours of employment, and other conditions of employment, and, if an understanding is reached, embody it in a signed agreement. The bargaining unit is

> All truckdrivers and warehouse employees, including all pricers, at the Nitro, St. Albans and Charleston warehouses, excluding office clericals, guards, professional employees and supervisors as defined in the Act, and all other employees.

WE WILL NOT in any other manner interfere with, restrain or coerce our employees in the exercise of rights guaranteed them by Section 7 of the Act.

All of our employees are free to become or refrain from becoming members of the above-named union, or any other labor organization.

HECK'S INC., *Employer.*

Dated: _____ By: _____
(Representative) (Title)

This Notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced, or covered by any other material.

If employees have any question concerning this Notice or compliance with its provisions, they may communicate directly

with the Board's Regional Office, Room 2407, Federal Office Building, 550 Main St., Cincinnati, Ohio 45202 (Tel. No 684-3686).

United States of America

Before the National Labor Relations Board

Case No. 9-CA-3728

HECK'S INC.

and

FOOD STORE EMPLOYEES UNION, LOCAL NO. 347, AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO

DECISION AND ORDER

On March 30, 1967, Trial Examiner Sidney Sherman issued his Decision in the above-entitled proceeding, finding that Respondent had engaged in and was engaging in certain unfair labor practices within the meaning of the National Labor Relations Act, as amended, and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the attached Trial Examiner's Decision. Thereafter, the Respondent filed exceptions to the Decision and a supporting brief.[1]

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[1] The Respondent excepts to the Trial Examiner's finding that the Union authorization card of employee Morris was properly authenticated, and, by motion incorporated in its brief, moves that the record be reopened and a subpoena be issued, requiring the Trial Examiner to appear and testify concerning his qualifications as a handwriting expert. The Respondent contends that failure to grant its motion should result in the rejection of Morris' card, inasmuch as Morris did not testify at the hearing and no other witness testified that he saw Morris sign the card.

After the hearing the parties stipulated that Morris was unavailable to testify, his whereabouts being unknown. The

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Relations Board has delegated its powers in connection with this case to a three-member panel.

The Board has reviewed the rulings of the Trial Examiner made at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Trial Examiner's Decision, the exceptions and briefs, and the entire record in this case, and hereby adopts the findings, conclusions, and recommendations[2] of the Trial Examiner.

Trial Examiner (Section III, C, 3, b, 4 of his Decision), after comparing the purported signature of Morris on the Union authorization card with a specimen signature taken from the Respondent's payroll records, concluded that the card was signed by Morris, and found that such a comparison is a proper method of proving the authenticity of a signature (see footnote No. 29 of the Trial Examiner's Decision and the authorities cited therein). The Trial Examiner further found that it is proper to presume that the card was signed on the date shown thereon. (footnote No. 30 of the Trial Examiner's Decision).

We agree with the Trial Examiner's finding that Morris' card was properly authenticated. (See also, *Combined Metal Mfg. Corp.*, 123 NLRB 895; *Philamon Laboratories, Inc.*, 131 NLRB 80, enfd. 298 F. 2d 176, (C.A. 2)). In any case, we note that even without Morris' card the Union had a majority of employees in the appropriate unit when it made its recognition demand. Accordingly, as we find the Respondent's motion to reopen the record lacking in merit, it is hereby denied.

[2] We agree that the Respondent's polling of its employees was in the circumstances of this case violative of Section 8(a)(1) of the Act. Therefore, we find it unnecessary to rely on or adopt the Trial Examiner's additional or alternative grounds for that finding, as set forth in the last sentence of footnote No. 10 of his Decision.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the Recommended Order of the Trial Examiner, and hereby orders that the Respondent, Heck's Inc., Ashland, Kentucky, its officers, agents, successors, and assigns, shall take the action set forth in the Trial Examiner's Recommeded Order.

Dated, Washington, D.C.

[SEAL] JOHN H. FANNING,
Member,

HOWARD JENKINS, Jr.,
Member,

SAM ZAGORIA,
Member,

National Labor Relations Board.

United States of America Before the National Labor Relations Board, Division of Trial Examiners, Washington, D.C.

Case No. 9–CA–3728

HECK'S, INC.[1]

and

FOOD STORE EMPLOYEES UNION, LOCAL NO. 347, AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL–CIO

Cassius B. Gravitt, Jr., Esq., and *James K. Lawrence, Esq.*, for the General Counsel. *Frederick Holroyd, Esq.*, Charleston, W. Va., for Respondent.

[1] Respondent's name appears as amended at the hearing.

Messrs. Sherwood M. Spencer and *Woodrow R. Gunnoe*, Charleston, W. Va., for the Charging Party.

Trial Examiner's Decision

Sidney Sherman, Trial Examiner: The instant charge was served upon Respondent on October 22, 1965,[2] the complaint issued on December 16, and the case was heard on February 1, 1967. The issues litigated related to allegations of unlawful interrogation, threats of reprisal, creating the impression of surveillance, and unlawful refusal to bargain. After the hearing briefs were filed by Respondent and the General Counsel. On March 16, 1967, an order was issued proposing certain corrections in the record and the incorporation therein of certain exhibits, and disposing of certain other matters. No objection has been received to this order, and it is hereby affirmed.[3]

Upon the entire record, and my observation of the witnesses, I adopt the following findings of fact and conclusions:

I. The Business of Respondent

Heck's, Inc., herein called Respondent, is a West Virginia corporation, engaged in the operation of retail stores at various locations in the States of West Virginia and Kentucky. The Respondent annually has gross sales of more than $500,000, and annually purchases from out-of-State points goods valued in ex-

[2] All events herein occurred in 1965, unless otherwise stated.

[3] In addition, it is now ordered (1) that Respondent's motions to strike appearing at pp. 24 and 28 of the transcript, as to which ruling was reserved at the hearing, are hereby granted, and (2) that Respondent's objection to evidence, which objection appears at page 100 of the transcript, and as to which ruling was reserved at the hearing, is hereby granted and the evidence objected to is hereby struck.

cess of $50,000. Respondent is engaged in commerce under the Act.

II. The Labor Organization Involved

Food Store Employees Union, Local #347, Amalgamated Meat Cutters and Butcher Workmen of North America, AFL-CIO, hereinafter called the Union, is a labor organization under the Act.

III. The Unfair Labor Practices

A. ISSUES

The pleadings, as amended at the hearing, raise the following issues:

1. Whether Respondent's president, Haddad, told employees on or about May 24, that he had discharged an employee when she admitted signing a union card?

2. Whether the interrogation of employees on October 8, by Respondent's operations manager, Darnell, violated Section 8(a)(1) of the Act or was privileged under the Board's *Blue Flash* doctrine?

3. Whether Respondent's assistant store manager, Mitchell, unlawfully created the impression of surveillance?

4. Whether Mitchell told an employee that another supervisor had been discharged because of the Union, and invited the employee to resign?

5. Whether Respondent's admitted refusal to recognize the Union violated Section 8(a) (5) and (1) of the Act?

B. SEQUENCE OF EVENTS

Respondent operates a chain of discount stores in Kentucky and West Virginia. The instant case involves only its Ashland, Kentucky store.

The instant organizing campaign began early in 1965, and by October 8, the Union had obtained a number of signed cards from persons working in the Ashland store. On May 24, during the foregoing campaign, Respondent's president Haddad, addressed the assembled store employees, and, after telling them, in effect, that the signing of a union card would not immunize them from disciplinary action, cited an incident involving the discharge of an employee in another store who had volunteered to him the information that she had signed a union card. There was some conflict in the testimony at the hearing, which will be considered below, as to the precise reason given by Haddad for the discharge of that employee.

On October 8, Union Agent Spencer called Respondent's counsel, Holroyd, stated that he had obtained signed cards from a majority of Respondent's Ashland employees, and requested recognition. Holroyd suggested that Spencer write him a letter to that effect. On October 8, Respondent's operating manager, Darnell, asked virtually all the employees in the Ashland store, whether he (or she) wanted to be represented by the Union. In a letter of October 11, to Holroyd Spencer repeated the substance of the foregoing oral demand, offering to show Respondent the Union's cards. On October 13, Holroyd replied by letter, declining to recognize the Union because of an alleged ambiguity in the Union's definition of the unit, and because a poll taken by Respondent demonstrated that the majority of the Ashland employees did not wish to be represented by the Union. On October 25, Spencer again wrote Holroyd, renewing the Union's demand, but received no reply.

There was uncontradicted testimony by employee Clare that early in October, Assistant Store Manager

Mitchell, an admitted supervisor,[4] told her that Respondent knew which employees had signed, and which had not signed, Union cards, and that the Union had attained majority status when Clare signed a Union card (on October 6).

C. DISCUSSION

1. Union animus

Respondent's union animus is amply attested by the Board's findings in 150 NLRB 1565 (Ashland store), 156 NLRB No. 73 (Parkersburg store), 158 NLRB No. 21 (Parkersburg store), 159 NLRB No. 104 (Huntington store), and 159 NLRB No. 127 (Huntington store). Perusal of these cases shows that at the foregoing stores Respondent reacted to a union organizational campaign by mounting a counteroffensive of interrogation and threats, did not hesitate to resort to discriminatory discharges, and that it consistently rejected requests for recognition. Thus, in 150 NLRB 1565, involving a campaign in 1964 by a different union (Retail Clerks) to organize the instant store, it was found that Respondent, through its president, Haddad, and operations manager, Darnell, engaged in extensive interrogation, that a supervisor threatened employees with discharge for union activity, and that an active union adherent was, in fact, discriminatorily discharged.

2. The 8(a)(1) issues

a. The Haddad speech

Riffe testified that on May 24, President Haddad told the assembled employees at the Ashland store

[4] The denial in the Respondent's answer of Mitchell's supervisory status was withdrawn at the hearing.

that they could sign all the union cards they wished, but they still had to do their work, and that he then mentioned the case of a girl in Respondent's Parkersburg store who, after volunteering to him the information that she had signed a union card, had been "fired on the spot." Menshouse testified to the same effect, and Maynard corroborated this version with only the minor embellishment that Haddad asserted that the Parkersburg employee had "flaunted" the fact that she had signed a union card. While agreeing otherwise with Riffee, Clare testified that Haddad interpolated the explanation that the girl in Parkersburg had been discharged because she took the position, in effect, that, having signed a union card, she was free to neglect her work, and Carter testified to substantially the same effect.

All the foregoing employee witnesses were called by the General Counsel, and were apparently sincere. Their testimony may be reconciled on the assumption that Haddad, purposely or otherwise, cast his remarks in such a form that they were susceptible of different interpretations. Thus, if he stated, as Maynard testified, that the employees could sign all the Union cards they wanted, but still had to do their work, and, that he had discharged a Parkersburg employee for flaunting the fact that she had signed a union card, it was understandable that some of the employees, like Clare, would interpret the last remark, taken in context, as implying that the case of the Parkersburg employee was given as an illustration of Haddad's thesis that the signing of a union card did not relieve the employees of their obligation to do their job. However, if, as Menshouse, Riffe and Maynard testified, Haddad did not make it clear that the discharge of the Parkersburg employee was for any reason other than her avowal of union adherence, it was expectable that

some, at least, of the employees would construe his remarks as implying, if not that all Union adherents would be summarily discharged, that Respondent, at the very least, would be quick to discharge Union adherents who gave it any offense. Moreover, in resolving the foregoing conflicting versions of Haddad's remarks, I deem it particularly significant, that Respondent, without offering any explanation at the time, failed to call Haddad to testify, notwithstanding that it was pointed out to Respondent's counsel at the hearing that such failure would invite the inference that Haddad's testimony would not aid Respondent.[5]

In view of this, I am constrained to find that, as indicated by the testimony of Menshouse, Riffe and Maynard, Haddad's remarks were couched in such a way as to lead his listeners to believe that adherence to the Union would subject them to reprisals, and that Respondent thereby violated Section 8(a)(1) of the Act.

b. Darnell's interrogation

Admittedly, Darnell on October 8, systematically interrogated all the employees in the Ashland store about their desire for Union representation. According to Darnell, he approached the employees in the

[5] In his brief Respondent's counsel asserts that he did not defend the allegation relating to Haddad's speech because of his understanding that [illegible] had been struck. However, at the close of the General C[illegible]el's case I stated on the record that I was reserving ruling on Respondent's motion to strike that allegation, and in my order of March 16, 1967, that motion was finally overruled. On the same date I advised Respondent's counsel by letter that, if he deemed himself prejudiced by this ruling, I would entertain a motion to reopen the hearing to receive further evidence on the matter. No such motion was filed.

store and read the following from a sheet of paper which he held in his hands:

> You are probably aware that the Food Handlers Union are (sic) trying to organize the store. They have made a demand of the Co. stating that they have a majority of our employees who desire them (the Union) to represent them. Do you want the Union to represent you? This will in no way have any bearing on your job. You do not have to answer this.

The sheet also listed the names of the employees and opposite this list were three ruled columns captioned, respectively "Yes," "No," and "Neutral." According to Darnell he indicated in one or the other of these columns the nature of each employee's reply to his question regarding their desire for union representation.[6] He testified that the majority of the employees interrogated repudiated the Union, and the tally on the sheet, eliminating the answers of those found below to be supervisors, shows that only 12 favored the Union while 23 opposed it. The answers of three employees were not recorded.[7] While three of the employees (Clare, Smith, and Menshouse) testified that Darnell's remarks to them corresponded to the foregoing quoted matter, Riffe testified only that Darnell asked her if she wanted to be represented by the Union, and Carter and Gates were specific that, in

[6] The foregoing document was offered in evidence at the hearing as Respondent's Exhibit 1, but was received only for the purpose of showing what Darnell purportedly read to the employees. However, upon reconsideration, the document was by my order of March 16, 1967, received in evidence without any limitation, since the contents of the entire document were in effect, adopted by Darnell in his testimony.

[7] Darnell testified that he may have missed a few employees in making the round of the store.

interrogating them, Darnell gave no assurance that their answers would not affect their jobs.

As I was favorably impressed by the demeanor of the latter three witnesses, and by the circumstantiality of their version of the interrogation incident, I credit them as against Darnell, and find that he offered them no assurance against reprisals.

Respondent contends that the foregoing interrogation was permissible under the Board's *Blue Flash* rule,[8] which sanctions interrogation of employees about their desire for union representation, provided, *inter alia,* (1) that the purpose is to verify a union's contemporaneous claim to represent a majority of the employees, (2) that such interrogation is accompanied by an assurance against any reprisals for union activity, and (3) that such interrogation does not occur in a context of employer hostility to union organization.

I am satisfied that none of the foregoing conditions was met here. As to (1) it is clear from Clare's undenied testimony, related in more detail below, that Respondent already knew on October 6, which employees had signed cards and that when Clare signed a card on that date the Union had achieved majority status, and there is no evidence that Respondent believed that such majority had been obtained by improper means.[9] Accordingly, Darnell's polling of the employees was not necessary to verify the Union's claim, and it seems fair to infer that Respondent's

[8] *Blue Flash Express, Inc.*, 109 NLRB 591; *Johnnie's Poultry Co.*, 146 NLRB 770.

[9] In any event, since the record, including Darnell's own testimony, is devoid of any evidence that he asked any of the employees on October 8, about the methods used by solicitors for the Union to induce the employees to sign the cards, it is clear that Respondent had no concern on this point.

only reason for taking the poll was the expectation that some of the Union adherents would be reluctant to admit their true sentiments to Darnell, even if they were given assurance against reprisals, and that the result of such a poll would, therefore (as proved to be the case here), be more favorable to Respondent than a count of the cards known by Respondent to have been actually signed. I do not believe that to permit such a "recount" by Respondent would conform to the letter or spirit of *Blue Flash.*[10]

As to the requirement of *Blue Flash* that the interrogation be accompanied by an assurance against reprisals, it has already been found that in the case of at least three employees Darnell neglected to convey that assurance.

As to the requirement of absence of union animus, it must be remembered that Darnell's interrogation occurred against the background of President Haddad's speech of May 24, in which, as found above, he cited the case of an employee whom he had discharged on the spot, when she announced that she had signed a union card. Although this speech had been delivered more than 4 months before the polling of the employees, such a dramatic threat to their job security by the top representative of management could not have

[10] Prior to *Blue Flash*, the Board had long held that systematic interrogation of employees about their union sentiments was unlawful as an invasion of their right to privacy and freedom from coercion. In *Blue Flash*, the Board balanced the mischief of such interrogation against the interest of the employees in verifying the accurancy of a union's claim to represent a majority of his employees, and struck a balance in favor of the employer. See *Johnnie's Poultry Co., supra.* However, where as here, there is ample basis for finding that the employer is already aware from other sources of the facts as to the Union's status, no legitimate purpose would be served by permitting him even the limited invasion of his employees' rights accorded by *Blue Flash.*

failed to make a lasting impression on the assembled employees.

Moreover, it is relevant here to consider Respondent's union animus, as demonstrated by the Board's findings in the various cases cited above, particularly the Board's findings that in March 1964, at the instant store, both Haddad and Darnell engaged in unlawful interrogation, Respondent threatened discharge of all the union adherents, and did discriminatorily discharge, Menshouse, a prominent union protagonist;[11] and, so far as appears from the record, such unfair labor practices were still unremedied on October 8.[12] It is difficult to see how, under such circumstances, Darnell's poll could be deemed to meet the requirement of *Blue Flash* that such interrogation must not occur in a context of hostility to union organization.

It may be noted, finally, that, in finding interrogation of an employee to be coercive, the Board and the courts have frequently cited the fact that the employee falsely disclaimed any interest in union representation.[13] Here, according to Darnell's own testimony the vast majority of the 38 Ashland employees disclaimed any desire for Union representation, even though, as found below, 21 of them had signed Union cards, and there is no evidence that any of them had prior to October 8, sought to revoke their cards.

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[11] 150 NLRB 1565, enfd. 63 LRRM 2527 (C.A. 6, Nov. 1966).

[12] While Menshouse had been rehired by October 8, there was no evidence as to the extent to which Respondent had otherwise complied with the Board's order by that date.

[13] See e.g., 159 NLRB No. 104, at page 7 of the Trial Examiner's Decision (involving Respondent's Huntington store), which was affirmed on this point by the Board, where the variance between the result of an employee poll and the card count was cited as a reason for finding the poll coercive.

For all the foregoing reasons, it is found that Darnell's interrogation violated Section 8(a)(1) of the Act.

c. The Mitchell-Clare incidents

Clare signed a Union card on October 6. She testified that early in October, she had discussions about the Union with Assistant Store Manager Mitchell, who told her that Respondent knew what employees had and had not signed Union cards, and that the Union had gotten "over the hump" and achieved majority status, when she signed a Union card. Mitchell did not testify. I credit Clare. A statement reflecting such precise knowledge of the number of Union adherents [14] could not fail to create an impression of close surveillance by management of Union activities, through employee informers or otherwise.[15] It is

[14] Moreover, as found below, the Union did in fact get "over the hump" on October 6, when it obtained its 20th (and 21st) card. (Both Clare and Brown signed cards on that date.)

[15] While it is not clear from Clare's testimony whether this conversation took place before or shortly after the October 8 poll, it is evident that Mitchell was not referring to that poll as the source of Respondent's information regarding the Union sentiments of the employees. For one thing, that poll elicited repudiations of the Union from the vast majority of the employees, and it is not apparent, in any event, how Respondent could have determined from that poll the precise date on which the Union obtained the decisive card.

Respondent cities certain testimony by Clare to the effect that she and Mitchell were on friendly terms, that she "probably" initiated discussions of the Union with him, that she "might have" told him before the foregoing incident that she knew that most of the employees had signed Union cards; and that, on the occasion in question, she agreed with Mitchell's observation on this point. However, there is no evidence that Clare disclosed to Mitchell the identity of the Union adherents or that she herself had signed a card; and the fact that Mitchell and Clare were on friendly terms or that she initiated the

accordingly found that, by creating such an impression, Respondent violated Section 8(a)(1) of the Act.

Clare testified further that some time after Darnell's visit to the store on October 8, Mitchell referred to a rumor then circulating among the employees that Store Manager McCann had been "discharged" [16] because of "the union and the employees," and that, in this connection, on a particular Saturday evening Mitchell told the witness that the employees and the Union had "shafted" McCann, and that the employees were not going to "shaft" Mitchell. As Mitchell did not testify, I credit Clare. It is apparent from the foregoing that Mitchell attributed the actual or supposed downfall of McCann to the extent of the employees' Union activity. Such a statement to an employee, implying, as it did, that management would not hesitate to discharge a supervisor for tolerating union activity, could not fail to impress upon such employee that those engaging in such activity might share the supervisor's fate. Accordingly, I find that Respondent thereby violated Section 8(a)(1) of the Act.[17]

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discussions of the Union could not detract from the coercive effect of Mitchell's imputation to higher management of exact knowledge of the identity of the Union adherents.

[16] As McCann apparently continued as store manager at Ashland until November 1966, the foregoing discussion either must have occurred after that date, or must have been based on misinformation as to McCann's status.

[17] Had McCann in fact been discharged because of a permissive attitude toward the Union, such discharge would clearly have been unlawful. *Talladega Cotton Factory, Inc.*, 106 NLRB 295, enf. 213 F. 2d 208 (C.A. 5); *Jackson Tile Manufacturing Co.*, 122 NLRB 764, enf. 272 F. 2d 181 (C.A. 5); *General Engineering, Inc.*, 131 NLRB 648. The rationale of these cases is that such a discharge tends to instill in employees the fear that they will suffer the same fate if they persist in their union

The General Counsel alleged a further violation based on Clare's testimony concerning an invitation to her by Mitchell to resign her job. However, the most that can be made of Clare's rather confused testimony on this point is that, while this remark was made by Mitchell on the same evening that he referred to the "shafting" of McCann, the occasion for the remark was not Clare's Union activity or sentiments but a disagreement over an entirely different matter, unrelated to the Union, and that the very next day Mitchell apologized to her therefor. Accordingly, I find no violation here.

3. The 8(a)(5)

a. The appropriate unit

It was agreed at the hearing, and I find, that the following unit is appropriate for purposes of collective bargaining:

> All employees at Respondent's store in Ashland, Kentucky, excluding guards, professional employees, and supervisors as defined in the Act.[18]

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activities. Such fear is nonetheless real, where, as here, the employees are told that their union activities caused the supervisor's discharge, whether or not that was actually the case.

[18] The original complaint provided for the exclusion of office clericals from the unit. The record shows that on October 8, Respondent had only one office clerical employee—Ruth Conley. (Cahal, who also worked in the office, was classified as a department head, and is found to be a supervisor.) Conley worked in a small enclosure in a corner of the store, where, among other things, she compiled records of cash receipts and processed employee timecards. Some time after October 8, she was transferred to the cosmetic department. At the hearing, the General Counsel moved to amend the complaint to include office clerks and Respondent stipulated to their inclusion. Under all the circumstances, I find that such inclusion was proper (*Heck's*,

It was also agreed at the hearing, in conformity with the Board's finding in the prior case involving the instant store,[19] that the six department heads at Ashland were supervisors, and that the night watchman at that store was a guard. They will accordingly be excluded.

b. The Union's majority status

At the hearing Respondent presented a document containing a list of 45 names, which were identified by McCann, the former manager of the Ashland store, as the names of all employees and department heads on the payroll for that store during the week beginning October 8.[20] Of the foregoing persons, it was stipulated at the hearing that six, who were listed as department heads, were supervisors and that one who was listed as the "nightwatchman" was a guard. Of the remaining 38, there was a dispute at the hearing only as to Roger Davis, who was listed on the exhibit as a department head. The General Counsel also contended at the hearing that the list was incomplete. However, after the hearing, the General Counsel withdrew this contention,[21] and Respondent indicated that it was satified that, as contended by the General Counsel, Davis was not a supervisor on October 8, but an employee.[22] It follows that the parties are now in agreement, and it is found, that on October 8 and during the ensuing week the unit consisted of 38 employees.

Inc., 159 NLRB No. 104; *Ohrbach's*, 118 NLRB 231; *Taunton Supply Corp.*, 137 NLRB 221), particularly as it was agreed to by Respondent at the hearing (Cf. *Heck's, Inc.*, 156 NLRB No. 73, fn. 17; *Heck's, Inc.*, 159 NLRB No. 104, fn. 1).

[19] 150 NLRB 1565.

[20] Trial Examiner's Exhibit 1.

[21] Trial Examiner's Exhibit 2.

[22] Trial Examiner's Exhibit 3.

At the hearing the General Counsel offered in evidence 30 signed Union authorization cards, which bore dates prior to October 8.[23] One of these cards, signed by McGuire, was later withdrawn, another was rejected because signed by France, a supervisor, and the card of Colm is hereby rejected for the same reason. Of the remaining 27 cards, the record shows that 6 purport to bear the signatures of individuals who were not in Respondent's employ on October 8. There remain 21 cards, most of which are challenged in Respondent's brief on various grounds, as follows:

1. Twelve cards are challenged on the ground that the signatory did not testify at the hearing. However, these cards were properly authenticated by witnesses at the hearing, who attested to the signing of the card.

2. Criswell's card is contested on the ground that he was a department head. However, the record does not support this contention.

3. Clare's card is attacked on the ground that France, her department head, talked to her about the Union. While Clare initially acknowledged that, before she signed the card, she discussed the Union at some length with France, who expressed the view that

[23] An additional card, that of Linda Fields, bore the date of November 27, which was subsequent to the Union's demands for bargaining in October.

At a later point in the hearing, the General Counsel offered in evidence 19 new cards, of which 17 were shown to have been signed by persons employed in Respondent's Ashland store on various date in January 1967. The General Counsel would add these cards to those already in evidence, and contends that there was a continuing demand by the Union, in January 1967, at a time when, as allegedly shown by such cards, the Union enjoyed majority status, and that such demand was rejected by Respondent for invalid reasons. However, in view of my ultimate findings below, there is no need to pass on this issue.

it "would be a good thing" if the Union organized the employees, at a later point in her testimony she professed to be unable to recall whether France talked to her about the Union before or after she signed the card, and averred that she had little contact with him other than in connection with her work, as they were not "very fond of each other." She insisted, moreover, that she signed the card at the request of a Union agent, after discussing the pros and cons of union representation, and she denied that France's endorsement of the Union had any bearing on her decision to sign the card, explaining that she signed it because she "didn't like how things were," and she did not like France and how he "ran things." It thus appears that it was her resentment of France's conduct as a supervisor, rather than his endorsement of the Union, that impelled her to sign the card.

Moreover, in *Aero Corporation*[24] in rejecting the contention that a card was invalid because solicited by a minor supervisor, the Board said:

> * * * to permit Respondent now to rely on Johnson's activities to justify its refusal to recognize the Union designated by a majority of its employees, would encourage Respondent to have just such marginal supervisors join in the employees' organizing activity, secure in the knowledge that, if the Union should gain a majority, disclosure of the supervisor's real status would defeat that majority.

This rationale was specifically approved by the Court of Appeals in that case.

Under all the foregoing circumstances, it is found that Clare's card is valid.[25]

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[24] 149 NLRB 1283 1287, enf. 363 F. 2d 702, 708 (C.A.D.C.).

[25] *Radio Station KVEC*, 93 NLRB 618, 623.

4. The cards of Wheeler and Morris were attacked on the ground that they were authenticated at the hearing only by specimens of their signatures taken from Respondent's payroll records.[26] However, after the hearing the parties submitted a stipulation to the effect that Wheeler's card was signed by him on the date shown thereon,[27] and, in view of this stipulation, no valid reason appears for rejecting his card.[28] As to Morris, it was stipulated only that his whereabouts were unknown and that he was unavailable to testify. However, I am satisfied from a comparison of his purported signature on the Union card with the specimen referred to above that the card was signed by him.[29] While there was no testimony at the hearing that such card was signed on the date shown thereon (October 2), it is proper to presume the accuracy of that date.[30]

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[26] Tax withholding certificates.

[27] See Trial Examiner's Exhibit No. 4 and my order of March 16, 1967.

[28] At thhe hearing, ruling was reserved on the admission of his card. It is hereby ordered received in evidence.

[29] As to the propriety of proving the authenticity of a union authorization card through comparison of the signature thereon with a specimen signature, see *Aero Corporation*, 149 NLRB 1283, 1285–1286, and 28 USCA Sec. 1731, which authorizes such comparison by Federal courts, without any limitation as to the conditions under which such comparison may be made. For common law authorities to the same effect, see *Wigmore on Evidence*, 3rd ed., sec. 2016 (fn. 1).

[30] *Wigmore on Evidence*, 3rd ed., sec. 2520(b). While such presumption is rebuttable, there is no contrary evidence here; and, indeed, the only other evidence on the point is the notation made by Darnell on the sheet, on which he recorded the results of his October 8 poll (Respondent's Exhibit 1), indicating that Morris aligned himself on that date with the Union adherents. Such evidence is not only consistent with, but tends to confirm, the presumption that Morris signed a Union card on a date prior to October 8.

It is concluded therefore that on October 8, the Union had signed cards from 21 out of 38 employees in the unit, and that it represented a majority of such employees on that date.

c. The Union's request

Respondent contends that the Union did not make a proper request for bargaining. Union Agent Spencer testified that on October 8, he told Holroyd that the Union represented a majority of the "employees," whether or not department heads were included in the unit, and Spencer's letter of October 11 reaffirms the Union's claim to represent a majority of the "employees" in the Ashland store, regardless of the status of the department heads;[31] and he there prognosticates, on the basis of his experience with Respondent, that the issue of the appropriateness of the Ashland unit would probably reach the Board, but he asserts that, no matter how the Board should rule on the department heads, the Union would still have a majority.

In his reply of October 13, Holroyd acknowledges that in their October 8 conversation, Spencer claimed to represent a majority of the "employees" in the store, and the letter continues:

> Pursuant to my questioning you stated that such majority existed with or without the department heads and you were making a demand to include the department heads or to exclude them depending upon what the Board decided in their case. This answer resulted in a very confused demand and we must therefore con-

[31] In this letter and his subsequent letter of October 25, Spencer specifies the exclusion of the office employees. While the one such employee here involved has been included by me in the unit, it is well settled that such a slight variance is immaterial. See *Heck's, Inc.*, 156 NLRB No. 73.

clude that you did not demand recognition in an appropriate unit.[31a]

In his reply of October 25, to the foregoing letter, Spencer made it clear that he was presently defining the unit as either a store-wide unit including "non-supervisory department heads" or as one which excluded department heads. Spencer was thus, offering Respondent a clear, present choice between (1) a unit which included department heads, on the assumption that they were not supervisors, and (2) one which excluded them. Respondent contends that, because it was offered such a choice, Spencer's unit request was ambiguous. However, there was no ambiguity in Spencer's request in the sense that it was not clear what unit he was willing to bargain for. Each of the alternative units was precisely defined, and he made it abundantly clear that he was equally willing to bargain for either one. Essentially, the situation is the same as if Spencer had merely proposed the exclusion of supervisors, and indicated that he was willing to abide by Respondent's determination as to the supervisory status of the department heads.

Moreover, even if the Union had erroneously insisted on including the six department heads, it appears that the Board would not have deemed its bargaining request defective for that reason.[32] It is not clear why the Union should be in a worse position, because it indicated indifference to the unit placement of the department heads. Respondent had

[31a] I do not credit the foregoing self-serving, hearsay version of Spencer's demand, insofar as it conflicts with his testimony.

[32] *Heck's, Inc.*, 156 NLRB No. 73, involving the Parkersburg store. There the Board found that a request for inclusion of as many as 5 employees out of a unit of 37 was not defective, even though the 5 were found ineligible. Here, there were, as found above, 38 in the appropriate unit.

no greater burden here than it had in the case just cited, involving its Parkersburg store. Here, as there, Respondent was required only to indicate in what respect it deemed the requested unit to deviate from the one it considered proper. Moreover, here unlike there, Respondent was assured that the Union would adapt its unit request to Respondent's views.

Accordingly, I find no fatal defect in the Union's bargaining request of October 8 or any of its subsequent requests.

d. The "good-faith" issue

Respondent offered no oral testimony at the hearing concerning the reason for its decision not to recognize the Union. Darnell averred only that the authority to make that decision was delegated to Respondent's labor relations adviser, Holroyd, who was also its trial counsel, and, although the Union called upon Holroyd to take the stand, he refused to do so.[33] Accordingly, the only insight into Respondent's reason for refusing to recognize the Union is afforded by Holroyd's letter of October 13, which, after alleging that the Union's unit request was defective for the reasons noted above, continued as follows:

> Irrespective of this and in addition, we have caused a poll of all employees in that store to be conducted, the resulting answer produced an overwhelming statement that you did not represent the employees.

[33] As the Union did not press the matter further, I had no occasion to rule on the propriety of such refusal. It is clear, however, that, if, as Darnell insisted, Holroyd was vested with sole responsibility for making such a decision regarding Respondent's labor relations policy as was here involved, he was subject to examination regarding his motivation to the same extent as any other representative of management, provided only that he could not be required to disclose any communications with his client that entered into the matter.

> Accordingly, recognition is declined until such time as you have been certified as the majority representative of the employees involved by the N.L.R.B.

It has already been found, on the basis of Darnell's uncontradicted testimony, that the result of this poll was in fact adverse to the Union. However, it has also been found that such poll did not conform to the requirements of the *Blue Flash* rule and was coercive. It is well settled that, in rejecting a union's recognition request, management may not, consistently with the requirements of good faith, rely on a count of union adherents obtained under coercive circumstances.[34] Such a poll has the twofold vice that it is patently not a reliable measure of employee sentiment, and that it is calculated to deter the employees from remaining union adherents in the future. Accordingly, it is found that, by its resort to, as well as its reliance on, the foregoing poll, Respondent demonstrated its bad faith.

I am mindful of the Board's finding in 159 NLRB No. 104, involving Respondent's Huntington store, that in that case the polling of employees by management concerning their union sentiments, "while unlawful was not so flagrant that it must necessarily have had the object of destroying the Union's majority status * * * nor was Respondent's conduct of such a character as to support an inference that Respondent's refusal to bargain was made in bad faith in violation of Section 8(a) (5) and (1) of the Act."

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[34] *Preiser Scientific, Inc.*, 158 NLRB No. 133, and cases there cited. *Home Pride Provisions, Inc.*, 161 NLRB No. 47.

However, here, unlike there, it was shown that Respondent was satisfied, even before taking the poll, that the Union had achieved majority status. Respondent, therefore, could have had no object in polling the employees on October 8, other than to coerce them into repudiating the Union. Thus, there is present here an essential element found to be lacking in the Huntington case—namely, coercive conduct which "necessarily * * * had the object of destroying the Union's majority status."

Moreover, even if this be viewed as a case where Respondent engaged in no unduly coercive conduct at the time of its refusal to honor the Union's request, it would still be found that such refusal was unlawful. Such a finding would be consistent with the Board's current policy as enunciated in *John P. Serpa, Inc.*, 155 NLRB 99, *Aaron Brothers Company*, 158 NLRB No. 108, and *H & W Construction Co.*, 161 NLRB No. 7. The net effect of these cases appears to be that, where there is no prior bargaining relationship, an employer, who is confronted with a request for recognition based on cards, need only refrain from any unfair labor practices "of such a character as to reflect a purpose to evade an obligation to bargain," and that, if this condition is met, the Board will not infer that his failure to recognize the union was in bad faith—i.e., because of rejection of the principle of collective bargaining. However, in the foregoing cases the Board imposed a limitation on the foregoing rule, which is especially significant here—namely, that, even if the foregoing requirement is met, an employer's refusal to recognize a union will still be found unlawful, if it affirmatively appears that he in fact entertained no doubt of the

Union's majority status.[35] Presumably, the rationale of this is that an employer cannot have a good faith doubt, if he had no doubt at all.

Here, there was affirmative evidence indicating that Respondent was aware on October 6, only 2 days before the Union's initial demand, that it had achieved majority status on that date.[36] No attempt was made to dispute this evidence,[37] and on the basis thereof it has been found that on October 6 Respondent was in fact aware of the Union's majority status. Accordingly, on that ground alone, it would be consistent with current Board policy to find that Respondent's refusal to recognize the Union was unlawful.

Respondent contends, finally, in its brief that it was justified in refusing to bargain because of a letter

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[35] See particularly the discussion of this point in *Aaron Brothers*, *supra*, and *H & W Construction Co.*, *supra*. See, also, *Greyhound Terminal*, 137 NLRB 87, enfd. 314 F. 2d 43 (C.A. 9); *Snow & Sons*, 134 NLRB 709, enfd. 308 F. 2d 687 (C.A. 9). While the foregoing cases dealt with an inspection of cards tendered by a union, no logical reason suggests itself why a different result should apply where the employer has ascertained the union's majority status from other sources. See Member Jenkins' concurring opinion in *Aaron Brothers*, wherein he states that an unlawful refusal to bargain may be proved, *inter alia*, "by independent knowledge of the employer that a union has a majority."

[36] The last 2 of the Union's 21 valid cards were in fact signed on October 6. Thus, Mitchell's aforenoted statement to Clare that Respondent knew that the Union had obtained the decisive card when she signed one (on October 6) was factually correct on the assumption that she was the first to sign on that date. In any case, it suffices that Respondent knew by October 8 that the Union had a card majority.

[37] Respondent did not even call any representative of higher management to deny that Respondent had the knowledge of the Union's majority status imputed to it by Mitchell. This circumstance, in itself, warrants the inference that such imputation was correct.

dated October 1, received by Darnell, which read as follows:

> Mr. FRED HADDAD,
> *President, Tri-State Distributors Inc.,*
> *19th Street, Nitro, West Virginia*
>
> DEAR MR. HADAD: This is to notify you that Retail Clerks Union Local 1059 has interest in your Hecks Inc. store located 3503 Winchester Avenue, Ashland, Kentucky, therefore, we hereby inform you that any agreements with any other Labor Organization would be in contradiction to the above stated interest and we will take all necessary legal action to protect such interest.
>
> Please contact the undersigned in the event you have any questions concerning this matter.
>
> Sincerely,
>
> WILLIAM E. HARVEY,
> *President, Retail Clerks Union Local 1059,*
> *187 South High Street, Columbus, Ohio,*
> *43125.*

Admittedly, Respondent did not reply. The foregoing letter was not authenticated as having been in fact sent by Retail Clerks. Moreover, there was no testimony that such letter motivated Respondent's refusal to recognize the Union, and, significantly, Holroyd's letter of October 13, although purporting to detail the reasons for Respondent's refusal to recognize the Union, makes no mention of Retail Clerk's alleged "interest."

In addition, although a number of employees had signed cards for Retail Clerks as late as March 1964,[38] Menshouse testified, without contradiction, that no representative of the Retail Clerks had appeared at the Ashland store since the latter part of 1964, which was several months before the Union began its organ-

[38] See the findings in *Heck's Inc.*, 150 NLRB 1565.

izing campaign, and nearly a year before the Union's bargaining requests. While in the case last cited, Retail Clerks filed, *inter alia,* a refusal-to-bargain charge, that charge was either withdrawn or dismissed before the hearing held in that case on July 14, 1964; and, so far as appears from the record, the only basis for Retail Clerks' claim in the October 1 letter that it had an "interest" in the Ashland store were the cards dating back to March 1964, and the outstanding order of the Board issued in that case on February 5, 1965, requiring Respondent to refrain from discouraging, or interfering with, employee activities on behalf of Retail Clerks.[39]

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[39] That order was enforced by the Court of Appeals on November 29, 1966, 63 LRRM 2527 (C.A. 6).

Respondent cites *Blade-Tribune Publishing Co.*, 161 NLRB No. 137, apparently as authority for the continuing vitality of the Retail Clerks' 18-month old cards. However, that case is clearly distinguishable, as it holds merely that, when an organizing campaign is interrupted by the processing of unfair labor practice charges and thereafter resumed by the same union, culminating in a demand for recognition, a card signed before such interruption may be regarded as still valid, even though over a year old. Here, there was no resumption of the organizing campaign by Retail Clerks at any time after its apparent suspension or abandonment late in 1964, nor any subsequent demand by that union for recognition. This difference in the factual setting of the two cases is of prime significance. For, in *Blade-Tribune* the employer was in essence attempting to avoid its bargaining obligation by relying on the disruption of a union's organizing campaign through its own unfair labor practices. Policy considerations were clearly opposed to the employer's position and required that the otherwise stale cards be validated, so that the employer might not profit by his own wrong. Here, on the other hand, Respondent would profit by its own wrong if it were allowed to rely on Retail Clerks' 18-month old cards as a reason for not bargaining with the Union, since the only basis for validating such cards would be Respondent's own unfair labor practices in

While the Board has held that, when he is confronted with competing claims by two rival unions, which give rise to a real question concerning representation, an employer need not, and, indeed, may not, recognize either one,[40] there was here no demand by Retail Clerks for recognition or any claim to represent the employees, but only a vague assertion of an "interest" in the employees, and a caveat against negotiating any contract with the Union, and Respondent admittedly made no effort to obtain clarification of the Retail Clerks' foregoing ambiguous position. In view of these circumstances, as well as the absence of any competent evidence that the foregoing letter was actually sent by Retail Clerks, that Respondent's refusal to recognize the Union was prompted to any extent by that letter, or that Retail Clerks had any valid authorization cards on October 1, it is found that Respondent's reliance on that letter is misplaced.[41]

1964. Whether the result here reached would be prejudicial to Retail Clerks is speculative, as there is no evidence that it intended to, or did, renew its campaign at any time. There can be no doubt, however, of the prejudicial effect on the employees' interest in self-organization, if Respondent's contention is sustained, as they will then be denied the right to representation by a union to which they adhered in the face of Respondent's unremedied unfair labor practices.

[40] *The Boy's Market, Inc.*, 156 NLRB 105, 107.

[41] *Boy's Market, Inc., supra.* The Board there held that the refusal to recognize a union is not excused by a rival union's claim which is "clearly unsupportable or specious, or otherwise not a colorable claim." Here, not only was there no substantial basis for Retail Clerks' claim, but the fact that Holroyd's letter of October 13 does not even advert thereto is persuasive that Respondent recognized the speciousness of such claim. See, also, *Essex Wire Corp.*, 130 NLRB 450.

It is therefore concluded that, by refusing to recognize the Union on and after October 8, Respondent violated Section 8(a) (5) and (1) of the Act.

IV. The Remedy

It having been found that the Respondent violated Section 8(a) (1) and (5) of the Act, it will be recommended that the Respondent cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

It has been found that the Respondent refused to bargain in good faith with the Union, which represented a majority of the employees in an appropriate unit. Accordingly, I shall recommend that the Respondent be ordered to bargain, upon request, in good faith with the Union as the exclusive representative of the employees in the appropriate unit.

V. Conclusions of Law

1. All employees in Respondent's Ashland, Kentucky, store, including office clerks, but excluding guards, professional employees, and supervisors as defined in the Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

2. At all times material the Union has been and still is the exclusive representative of all the employees in the aforesaid unit for the purposes of collective bargaining, within the meaning of Section 9(a) of the Act.

3. By refusing since October 8, to bargain collectively with the Union as the exclusive representative of its employees in an appropriate unit, the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a) (5) and (1) of the Act.

4. By interrogation of employees about their Union activities, threatening reprisals for such activities, and creating the impression of surveillance thereof, Respondent has interfered with, restrained, and coerced its employees in the exercise of rights guaranteed in Section 7 of the Act, and has engaged in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

Recommended Order

Upon the entire record in the case, and the foregoing findings of fact and conclusions of law, it is recommended that Respondent, Heck's, Inc., Ashland, Kentucky, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain concerning rates of pay, wages, hours of employment, or other conditions of employment with Food Store Employees Union, Local #347 Amalgamated Meat Cutters and Butcher Workmen of North America, AFL-CIO, as the exclusive representative of all employees in its Ashland, Kentucky, store, including office clerks, but excluding professional employees, guards, and supervisors as defined in the Act.

(b) Coercively interrogating employees about their union activities, threatening reprisals for such activities, and creating the impression of surveillance thereof.

(c) In any like or related manner, interfering with, restraining, or coercing its employees in the exercise of their right to self-organization, to form, join, or assist the above-named Union, or any other labor organization and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from

any or all such activities, except to the extent that such right may be affected by the provisos to Section 8(a)(3) of the Act.

2. Take the following affirmative action, which is deemed necessary to effectuate the policies of the Act:

(a) Upon request, bargain collectively in good faith with Food Store Employees Union, Local #347 Amalgamated Meat Cutters and Butcher Workmen of North America, AFL–CIO, as the exclusive representative of all employees of the Respondent, in its Ashland, Kentucky store, including office clerks, but excluding guards, professional employees, and supervisors as defined in the Act, with respect to rates of pay, wages, hours of employment or other conditions of employment, and, if an understanding is reached, embody such understanding in a signed agreement.

(b) Post at its store in Ashland, Kentucky, copies of the notice attached hereto marked Appendix.[42] Copies of said notice, to be furnished by the Regional Director for the Ninth Region, shall, after being duly signed by the Respondent's representative, be posted by the Respondent immediately upon receipt thereof, and maintained by it for a period of at least 60 consecutive days thereafter in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to insure that said notices are not altered, defaced, or covered by any other material.

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[42] In the event that this Recommended Order is adopted by the Board, the words "A DECISION AND ORDER" shall be substituted for the words "THE RECOMMENDATIONS OF A TRIAL EXAMINER" in the notice. In the further event that the Board's Order is enforced by a decree of a United States Court of Appeals, the words "A DECREE OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER" shall be substituted for the words "A DECISION AND ORDER."

(c) Notify the Regional Director for the Ninth Region, in writing, within 20 days from the date of receipt of this Decision, what steps Respondent has taken to comply herewith.[43]

Dated at Washington, D.C.

SIDNEY SHERMAN,
Trial Examiner.

APPENDIX

NOTICE TO ALL EMPLOYEES

Pursuant to the Recommendations of a Trial Examiner of the

NATIONAL LABOR RELATIONS BOARD

and in order to effectuate the policies of the

NATIONAL LABOR RELATIONS ACT

we hereby notify our employees that:

> WE WILL bargain in good faith, upon request, with FOOD STORE EMPLOYEES UNION, LOCAL #347 AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL–CIO, as the exclusive representative of all employees in the bargaining unit described below in respect to rates of pay, wages, hours, of employment, or other conditions of employment, and, if an understanding is reached, embody it in a signed agreement. The bargaining unit is:
>
> > All employees at our Ashland, Kentucky store, including office clerks, but excluding guards, professional employees, and supervisors as defined in the Act.

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[43] In the event that this Recommended Order is adopted by the Board, this provision shall be modified to read: "Notify said Regional Director, in writing, within 10 days from the date of this Order what steps the Respondent has taken to comply herewith."

WE WILL NOT coercively interrogate our employees about their union activities, threaten reprisals for such activities or create the impression of surveillance thereof.

WE WILL NOT in any like or related manner interfere with, restrain or coerce our employees in the exercise of their right to self-organization, to form join or assist FOOD STORE EMPLOYEES UNION, LOCAL #347 AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL–CIO, or any other labor organization, to bargain collectively through representatives of their own choosing and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection or to refrain from any or all such activities, except to the extent that such right may be affected by the provisos to Section 8(a)(3) of the Act.

HECK'S, INC., *Employer.*

Dated: _____ By: _____
(Representative) (Title)

This Notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced, or covered by any other material.

If employees have any question concerning this Notice or compliance with its provisions, they may communicate directly with the Board's Regional Office, Room 2407 Federal Office Building, 550 Main St., Cincinnati, Ohio 45202 (Tel. No. 684–3663).

APPENDIX G

United States Court of Appeals for the Fourth Circuit

No. 10543

GENERAL STEEL PRODUCTS, INC. AND CROWN FLEX OF NORTH CAROLINA, INC., PETITIONERS,

versus

NATIONAL LABOR RELATIONS BOARD, RESPONDENT.

On Petition to Review the Decision and Order of the National Labor Relations Board.

(Argued January 11, 1968. Decided June 28, 1968.)

Before HAYNSWORTH, Chief Judge, and BOREMAN and WINTER, Circuit Judges.

Lewis P. Hamlin, Jr., (Robert M. Martin on brief) for Petitioners, and Elliott C. Moore, Attorney, National Labor Relations Board, (Arnold Ordman, General Counsel, Dominick L. Manoli, Associate General Counsel, Marcel Mallet-Prevost, Assistant General Counsel, and Elliott C. Lightman, Attorney, National Labor Relations Board, on brief) for Respondent.

PER CURIAM:

Petitioners, General Steel Products and Crown Flex of North Carolina, found by the Board to constitute a single employer within the meaning of the National Labor Relations Act,[1] seek review of an order of the National Labor Relations Board.[2] The order is predi-

[1] 29 U.S.C.A. § 151 *et seq.*

[2] 157 NLRB No. 59.

cated upon the Board's findings that the employer illegally coerced its employees in the exercise of their rights under the Act and had no good faith doubt as to the majority status of the union when it refused to recognize it as the authorized bargaining representative of a unit of its employees. We deny enforcement of those portions of the order dependent upon the latter finding.

The Upholsterers' International Union of North America, AFL–CIO attempted to organize the Company's employees. By letter, the union advised the company that it held signed authorization cards from a majority of the company's employees and requested recognition and a bargaining meeting. The Board found that at that time the union held valid cards from 120 of 207 employees in the unit in question. The company refused to recognize the union, stating its disbelief in the union's claimed majority status. In the meantime, the union filed a petition with the Board for a representation election. The election was held and the union was defeated.

The Board found that during the union's campaign the company engaged in coercive activity in violation of § 8(a)(1) of the Act. Substantial evidence exists on the whole record to support this finding, and we enforce those portions of the order directing the company to cease and desist from coercing its employees and to post appropriate notices. Accepting the Board's findings, however, the violations of § 8(a)(1) as found by the Board were not so extensive or pervasive as to prevent the conduct of a valid secret election.[3]

[3] Whether or not the election actually held was properly held invalid, we do not decide, but the § 8(a)(1) violations found to have occurred were not so pervasive that available remedies were reasonably calculated to assure a free exercise of the employees' choice by secret ballot rather than by resort to a count of questionable cards.

The Board further found that the company's refusal to bargain with the union upon request was not motivated by a good faith doubt as to majority status and constituted a violation of §§ 8(a) (5) and (1) of the Act. In several recent cases we have set forth in sufficient detail the reasons such a finding cannot stand in a typical case of this sort.[4] Accordingly, we deny enforcement of those portions of the order directing the company to cease and desist from refusing to bargain with the union and to bargain with the union upon request.

Enforcement granted in part and denied in part.

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[4] Crawford Mfg. Co. v. NLRB, 4 Cir., 386 F. 2d 367, cert. denied 36 L W 3404, ____ U.S. ____; NLRB v. S.S. Logan Packing Co., 4 Cir., 386 F. 2d 562; NLRB v. Sehon Stevenson Co., Inc., 4 Cir., 386 F. 2d 551; NLRB v. Heck's Inc., 4 Cir., ____ F. 2d ____ (Decided this day); NLRB v. Gissel Packing Co., Inc., 4 Cir., ____ F. 2d ____ (Decided this day).

APPENDIX H

United States Court of Appeals for the Fourth Circuit

No. 10543

GENERAL STEEL PRODUCTS, INC., and CROWN FLEX OF NORTH CAROLINA, INC., PETITIONERS

vs.

NATIONAL LABOR RELATIONS BOARD, RESPONDENT

THIS CAUSE came on to be heard upon the petition of General Steel Products, Inc., and Crown Flex of North Carolina, Inc., to review and set aside or modify a certain order issued against it by the National Labor Relations Board on the 11th day of March, 1966, in proceedings before the said Board entitled "General Steel Products, Inc., and Crown Flex of North Carolina, Inc., and Upholsterers' International Union of North America, AFL–CIO", numbered 11–CA–2491, 11–CA–2613, and 11–RC–2022; upon the answer of the National Labor Relations Board and cross-petition for enforcement of said order, and upon the certified list in lieu of a transcript of the record; and the said cause was argued by counsel.

ON CONSIDERATION WHEREOF, it is ordered, adjudged and decreed by the United States Court of Appeals for the Fourth Circuit, that the order of the National Labor Relations Board be, and it is hereby, enforced with respect to the violations of § 8(a)(1) of the National Labor Relations Act; that enforcement is denied as to those portions of the order directing the company to cease and desist from refusing to bargain

with the union and to bargain with the union upon request, and that the said General Steel Products, Inc., and Crown Flex of North Carolina, Inc., abide by and perform the directions of the Board in said order as so enforced contained, in accordance with the opinion of the Court filed herein.

S/ CLEMENT F. HAYNSWORTH, JR.,
Chief Judge, Fourth Circuit.

[Filed: June 28, 1968, Samuel W. Phillips Clerk.]

A True Copy, Teste: Samuel W. Phillips, Clerk
By Margaret M. Walton, *Deputy Clerk.*

APPENDIX I

United States of America, Before the National Labor Relations Board

GENERAL STEEL PRODUCTS, INC., and CROWN FLEX OF NORTH CAROLINA, INC.

and

UPHOLSTERERS' INTERNATIONAL UNION OF NORTH AMERICA, AFL–CIO

DECISION AND ORDER

On November 12, 1965, Trial Examiner David London issued his Decision in the above-entitled proceeding, finding that the Respondent had engaged in and was engaging in certain unfair labor practices and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the attached Trial Examiner's Decision. The Trial Examiner further found merit in certain objections filed by the Union to the election conducted in Case No. 11–RC–2022 and recommended that the election be set aside. Thereafter, the Respondent filed exceptions to the Trial Examiner's Decision and a supporting brief.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its powers in connection with this proceeding to a three-member panel.

The Board has reviewed the rulings of the Trial Examiner made at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Trial Examiner's Decision, the exceptions, brief, and the entire

record in these cases,[1] and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner with the modifications noted below.[2]

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby adopts as its ORDER the Recommended Order of the Trial Examiner, as modified herein, and ORDERS that General Steel Products, Inc., and Crown Flex of North Carolina, Inc., High Point, North Carolina, their officers, agents, successors, and assigns, shall take the action set forth in the Trial Examiner's Recommended Order as so modified:

IT IS FURTHER ORDERED that the petition in Case No. 11–RC–2022 be, and it hereby is, dismissed, and all proceedings held in connection therewith be, and they hereby are, vacated, March 11, 1966.

[SEAL] JOHN H. FANNING,
Member,
GERALD A. BROWN,
Member,
SAM ZAGORIA,
Member,
National Labor Relations Board.

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[1] Respondent's exceptions directed to the credibility resolutions of the Trial Examiner are without merit. The Board will not overrule the Trial Examiner's resolutions as to credibility, unless a clear preponderance of all relevant evidence convinces us that they are incorrect. Upon the entire record, such conclusion is not warranted herein. *Standard Dry Wall Products*, 91 NLRB 544, enfd. 188 F. 2d 362 (C.A. 3).

[2] In adopting the Trial Examiner's finding that the Union obtained authorization cards from a majority of the Respondent's employees, we need not rely upon the cards of Billy Don Brown and Terry Roberson.

United States of America, Before the National Labor Relations Board, Division of Trial Examiners, Washington, D.C.

Cases Nos. 11–CA–2491, 11–CA–2613, 11–RC–2022

GENERAL STEEL PRODUCTS, INC., AND CROWN FLEX OF NORTH CAROLINA, INC.

and

UPHOLSTERERS' INTERNATIONAL UNION OF NORTH AMERICA, AFL–CIO

Yelverton Cowherd, Jr., Esq., and *Charles M. Williamson, Esq.,* of Winston-Salem, N.C., for the General Counsel; *Lewis P. Hamlin, Esq.,* of Salisbury, N.C., and *Robert L. Martin, Esq.,* of High Point, N.C., for Respondent; *Richard S. Hoffmann, Esq.,* of Philadelphia, Pa., for the Charging Union.

Before: DAVID LONDON, Trial Examiner

TRIAL EXAMINER'S DECISION

Statement of the Case

Upon a twice amended charge in Case No. 11–CA–2491 [1] filed by Upholsterers' International Union of North America, AFL–CIO, hereinafter referred to as the Union, the Board's General Counsel, on October 21, 1964, issued a complaint against General Steel Products, Inc. ("General Steel"), and Crown Flex of North Carolina ("Crown Flex"), hereafter collectively referred to as Respondent. That complaint, as amended on December 15, 1964, alleges that on specified dates between July 3 and November 6, 1964,

[1] The original charge was filed July 29, 1964; the amendments thereof on September 16, 1964, and October 15, 1964.

Respondent, in violation of Section 8(a)(1) of the National Labor Relations Act, as amended ("the Act"), interrogated its employees concerning their union activities, and threatened them with reprisals for engaging in or supporting union activities. Respondent, by separate answers, denied the commission of any alleged unfair practice.

Upon a charge filed by the Union on January 7, 1965, in Case No. 11-CA-2613, the Board's General Counsel, on March 31, 1965, issued a second complaint against Respondent, alleging that since on or about August 14, 1964, in violation of Section 8(a) (1) and (5) of the Act, Respondent has refused to bargain collectively with the Union, the duly designated representative of its employees, in an appropriate unit with respect to rates of pay, wages, and other terms and conditions of employment. By separate answers filed in this proceeding, Respondent, though admitting a refusal to bargain, denied the commission of any unfair labor practice and pleaded several specific defenses which are considered in later portions of this Decision.

On August 14, 1964,[2] the Union filed a petition with the Board in Case No. 11-RC-2022 seeking certification as collective-bargaining representative of the production and maintenance employees of General Steel. Following a hearing on that petition on September 10, the Board's Regional Director for the Eleventh Region, on October 6, issued his Decision and Direction of Election finding that General Steel and Crown Flex constitute a single employer for purposes of collective bargaining, and directing that an election be conducted among the employees of both corporations in an appropriate unit to determine whether they desired

[2] Unless otherwise noted all references to dates herein are to the year 1964.

representation by the Union. On October 13, General Steel filed with the Board at Washington, D.C., its Request for Review of the aforementioned Regional Director's Decision and Direction of Election contending that, contrary to the finding of the Regional Director in that proceeding, the record therein does not establish that General Steel and Crown Flex constitute "a single employer for purposes of the Act." On October 28, the Board issued its Order denying the aforesaid Request on the ground that "it raises no substantial issues warranting review."

At the election conducted on November 6, 83 votes were cast for the Union, 94 against that organization, and 13 ballots were challenged. On November 10, the Union filed timely Objections to that election based on Respondent's alleged illegal conduct which, it was claimed, affected the results of that election. On December 23, following an investigation of the issues raised by the Objection aforementioned, the Regional Director issued his Supplemental Decision and Direction in Case No. 11–RC–2022 overruling four of said Objections. With respect to the remainder, he found the testimony with respect thereto to be in conflict and involving questions of credibility as to substantial and material issues. Accordingly, he directed that a hearing to resolve these issues be held before a Trial Examiner to be designated by the Chief Trial Examiner.[8] Because some of the said unresolved issues raised by the Objections in Case No. 11–RC–2022 are related to the issues posed by the amended complaint in Case No. 11–CA–2491 and the complaint in Case No. 11–CA–2613, the Regional Director, deeming it

[8] With respect to the 13 challenged ballots, the Regional Director sustained two of such challenges. The remainder were not considered by him, as a determination with respect thereto would not affect the ultimate result of the election.

necessary in order to effectuate the purposes of the Act and to avoid unnecessary costs and delay, by Orders dated December 28, 1964 and March 31, 1965, ordered that all three of said proceedings aforementioned be consolidated for hearing.

That hearing was held, pursuant to due notice, before the undersigned Trial Examiner duly designated by the Chief Trial Examiner, at High Point, North Carolina, on various dates between May 24 and June 18, 1965, inclusive. All parties to the proceedings appeared and were given full opportunity to offer relevant and competent evidence. On or about August 30, 1965, briefs were received from the General Counsel and Respondent, both of which have been duly considered.

Upon the entire record in this consolidated proceeding, and my observation of the witnesses as they testified, I make the following:

Findings of Fact

I. THE BUSINESS OF GENERAL STEEL AND CROWN FLEX, AND THEIR SINGLE EMPLOYER STATUS

The two complaints herein allege, the separate answers of General Steel and Crown Flex admit, and I find, that (1) General Steel and Crown Flex are North Carolina corporations engaged in the same premises at High Point, North Carolina, General Steel being engaged in the manufacture of metal components of dual-purpose furniture, and Crown Flex in the manufacture of insulator pads; (2) during the 12 months preceding the filing of the two complaints herein, each of said corporations purchased and caused to be shipped materials valued in excess of $50,000 to its High Point, North Carolina, plant from points outside the State of North Carolina; (3) dur-

ing the same period, both General Steel and Crown Flex sold and shipped finished products of a value in excess of $50,000 to points outside the State of North Carolina. The separate answer of each corporation admits, and I find, that each of said corporations is engaged in commerce within the meaning of the Act. For the reasons heretofore detailed in Statement of the Case, *supra,* with special emphasis on the Board's Order of October 28 in Case No. 11–RC–2022, denying General Steel's Request for Review, I also find that General Steel and Crown Flex constitute a single employer for purposes, and within the meaning, of the Act. *Pittsburgh Plate Glass Co.,* 313 U.S. 146; *Tennessee Packers, Inc.,* 154 NLRB No. 73, fn. 1; *N.L.R.B.* v. *Quaker City Life Insurance Co.,* 138 NLRB 61.

II. THE LABOR ORGANIZATION INVOLVED

Upholsterers International Union of North America, AFL–CIO, is a labor organization within the meaning of Section 2(5) of the Act.

III. THE UNFAIR LABOR PRACTICES

A. Interference, restraint and coercion

Frank D. Hoffman, Jr.,[4] executive vice president of both General Steel and Crown Flex, and "operating head" of both companies during all times relevant herein, testified that in 1962 and 1963 he "heard some talk" that a union organizing campaign was taking place among Respondent's employees, and that since June 1964 he was aware of a "real effort" to bring that campaign to a successful conclusion, a campaign which Respondent admittedly sought to defeat. In its

[4] Frequently referred to in the Transcript of Testimony as "Huffman."

effort to avoid the designation of the Union as collective-bargaining representative of its employees, Respondent engaged in the following conduct interfering with, coercing, and restraining its employees in the exercise of their right guaranteed by Section 7 of the Act:

(1) On or about July 1, 1964, approximately six weeks before the Union made its demand for recognition on the following August 14 as is hereafter found, Foreman E. L. Curry of Crown Flex, came to employee H. T. Slate while the latter was engaged at his machine and asked him whether a union representative had called on him. Curry admitted that he made the inquiry.

(2) About July 23, 1964, Curry came to the machine of William Moss and asked him if he had heard anything about the Union. Moss testified that, when he replied in the negative, Curry told him that if Hoffman "found out that anyone was for it or anything like that, that [Hoffman] would fire them." Curry admitted that he "may have" asked Moss in July whether he heard anything about the Union, he just "didn't remember whether [he] did or not, * * * [he] went around to *all of them.*" He did not deny that he told Moss that if Hoffman found out that anyone was for the Union he would fire them.

(3) Moss further testified, credibly, that on the following day, R. H. Lewis, admitted by Respondent Crown Flex's answer to be a supervisor, came to Moss' machine and told him that he "heard the Union was back out there again and if anyone tried to get [Moss] to join, or anything like that, for [him] not to have anything to do with it, [that] if Frank Hoffman found out that anybody was for it that he would probably fire them." When Lewis was asked by Respondent's counsel whether he told Moss what the

latter had attributed to him, Lewis admitted he "had a conversation like that but [didn't] remember it being with Mr. Moss *in particular.*"

(4) On or about August 8, Foreman James Rigsbee came to the machine being operated by employee Samuel Snow and asked him whether he had signed a union card. Snow replied that it was none of his business.

(5) About August 19, Rigsbee approached employee Haywood Peterson and summoned four or five other employees together as a group. Rigsbee told the assembled employees *that he had just come from the office where Hoffman* had told him that the union was coming in, "and if it did come in, that a nigger would be the head of it, and he was putting in 10 new machines on that line, and that if the Union did come in, the niggers would be operators of them." Rigsbee admitted that he told the group that "they're going to get 10 new machines and 10 new niggers to run them" but that "it was all a joke." He testified, however, that he knew of only one Negro employed in the entire plant at that time, "there might have been one in the shipping department."

(6) About four or five weeks before the election, Bobby Simpson, then the foreman of the shipping department, called James Hutchins and other employees in that department to the shipping office. He there told the group that it would be their privilege to vote as they pleased and that he could not tell them which way to vote. He added, however, that "if the Union came in * * * maybe a lot of people wouldn't buy [Respondent's] products" because they were union made; that "in case [they] left and went to work some place else that it might be hard for [them] to find a job because [they] had been working for a union outfit." Simpson admitted he "might"

have made a statement to the effect that if the employees "left and went somewhere else that it would be hard to find a job because of working for a union outfit * * * that people in this area did not recognize the Union * * * there was a possibility of some of them holding against hiring people that were associated with the Union."

(7) Two or three weeks before the November 6 election, Foreman Richard Davis came to the worktable of Eugene Heaton and Walter Lewis and asked them how they were going to vote. Upon receiving a reply that they would vote "yes," Davis said: "If you do I will fire you," laughed, and walked off. Davis admitted that he "probably" made the statements attributed to him but sought to minimize its effect by asserting that he and the employees "kidded around all the time." Heaton, however, testified that while he had no fear that he would be terminated *before* the election because of its proximity, he believed that once the election was out of the way and Respondent "knew that [he] had voted for the Union, * * * they would have fired [him]."

(8) During the morning of the election, Foreman Davis came to the worktable of employee James Byrd and asked him how he intended to vote. Byrd replied that he had not made up his mind. Tiny Micheaux (Mishoe), who was working nearby, told Davis that another employee, Jack Ledford, might vote for the Union if he did not get transferred to another job to which Davis replied: "If I find out that he voted for the Union, I will fire him," and then added: "I will fire him for not doing his work."

(9) On the morning of the election, Foreman Parish told employee William Poore that the employees did not need a union and that it would do them more harm than good. Parish admitted that he

said something "like that" to Poore, not on election day, but "maybe the day before that, or so."

The findings pertaining to these nine violations are based on the testimony of the employees who were the subject of the cited interrogation and to whom the described threats were addressed. Some of the accusations were admitted, expressly or impliedly, and others remained undenied. Where conflict exists and where resort must be had to all the existing circumstances and the demeanor of the respective witnesses as they testified in order to resolve that conflict, I have no hesitation in crediting the version thereof offered by the employees against the denials of Respondent's supervisors. While many of the employees were illiterate, some of them pitifully so, I was impressed by their sincerity. The supervisors, on the other hand, impressed me as being obsessed with the desire to vindicate their employer regardless of the truthfulness of their testimony.

At this stage in the administration of the Act, I deem it unnecessary to cite authorities establishing the illegality of the threats directed to employees by Respondent's supervisors concerning their union membership or sympathies as found above. Interrogation of the employees during the Union's campaign, of which campaign Respondent was well aware, and which interrogation took place *before* August 14, the date of the Union's demand for recognition, can certainly not be deemed, as Respondent contends, to be "questioning which the employer was entitled to carry on for the purpose of assessing the Union's claim of majority." Nor was there any legal justification for the subsequent interrogation of employees as to *how they intended to vote* at the approaching election which the Board had ordered to be a secret election. "The most relevant factor" in determining whether

interrogation is coercive is "whether the questions seem to seek information which the employer in good faith needs—as when individuals are asked whether they belong to the Union so that the employer can check the Union's claim to represent a majority, or to the contrary seem to seek information most useful for discrimination." *N.L.R.B.* v. *Firedoor Corporation,* 291 F. 2d 328 (C.A. 2), cert. denied 368 U.S. 921. Here, the interrogation found to be violative immediately above was conducted under such circumstances as to disclose on its face that it was a kind which reasonably may be expected to impede and coerce employees in the free exercise of their statutory rights. *Mallory Plastics Company,* 149 NLRB No. 138; *Heinrich Motors, Inc.,* 153 NLRB No. 139.

I also find coercive Rigsbee's statement to Peterson made immediately after he left Hoffman's office as described in III A (5) *supra,* that, if the Union came in, a "nigger" would be the head of that organization.[5] I regard this statement "as a threat that working conditions would not be as pleasant after the advent of a union. There are large areas and many localities in this country, [fortunately diminishing in size and number], where those of Anglo-Saxon stock regard themselves as an elite segment of society with the same arrogance and as little reason as Hitler so regarded Nordics. I cannot read into [Rigsbee's] statement * * * an expression of dedication to principles of democracy or fair employment practices. It was, rather, a direct threat that * * * if they accepted the Union, * * * the employees would suffer enforced association with [and be subjected to work-

[5] Ted Davis, the Union's International representative most active in the campaign to organize Respondent's employees, appeared to be of the Negro race.

ing conditions negotiated by], persons of supposedly inferior origins." *Petroleum Carrier Corporation of Tampa, Inc.*, 126 NLRB 1031, 1038–9. By that threat, Respondent violated Section 8(a)(1) of the Act.[6]

B. The posted notice

About September 1, Respondent posted on its premises a large notice "To All Employees" reading, in part, as follows:

> Because of the campaign which the union is putting on to get into the plant, several questions have come up on which you will want to know how the Company stands. We have decided to state the Company's position clearly for the benefit of everyone.
>
> (1) This is a matter of concern to the Company, of course, and it is also a matter of serious concern to you. It is our firm belief that if this union were to get into this Company it would not benefit you but would work to your serious harm.
>
> (2) It is our positive intention to oppose the union and by every proper means to prevent it from coming in here.

The Board has on several prior occasions found and concluded, as I do herein, that this identical notice to employees predicting that the advent of a union "would not benefit you but would work to your serious harm" is violative of Section 8(a)(1) of the Act. *Overnite Transportation Company*, 154 NLRB No. 98; *Burlington Industries, Inc.*, 144 NLRB 245; *Owens-Corning Fiberglas Corporation*, 146 NLRB 1492, 1503; *White Oaks Acres*, 134 NLRB 1145, 1149–1150.

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[6] See also *Atkins Saw Division, Borg-Warner Corporation*, 148 NLRB No. 98.

C. The preelection speech

A day or two before the November 6 election, Hoffman assembled all the employees and delivered a speech designed to influence them to vote against the Union at the coming election. Employee Roy Edmonds testified that Hoffman "started off bringing up the Right To Work law; he said that if we went out on strike, when we hit the door we had no more job," and that while the "government said he had to negotiate in good faith, he said he would negotiate, negotiate, and keep on negotiating." Employee John Edmonds testified to the same effect but added that Hoffman said "he did not have to sign a thing," that "strikes were the only weapon the union had [which weapon, he said], was no good in North Carolina with [its] Right to Work law."

James Hutchins testified that Hoffman reminded the assembled employees of the Bottoms-Fiske strike which he said lasted two years, at the end of which the employees "lost their homes and their cars and everything they had"; that he recalled a strike at Finch Furniture nearby in Thomasville where, he said, they "lost their homes and cars and haven't gone back to work yet"; that if the Union came in Respondent's plant and went out on strike, when they "walked through that door [they] were finished, * * * [they] couldn't get back in." Hutchins also testified that Hoffman stated that although the "National Labor Board said that he would have to negotiate in good faith, he would negotiate, negotiate, negotiate, and negotiate."

Employee Wayne McCall testified that during the speech Hoffman said "he couldn't * * * and was not going to work with a union in the plant"; that in connection with a strike in Thomasville which lasted "maybe two years, * * * the men were out walking

picket lines in the cold, they lost their cars, their homes, they were still out of work, they couldn't get a job for participating with a union * * *; that one weapon that the Union has is a threat of a strike, and that in North Carolina a strike is no good to nobody (sic) because you have the Right to Work law and when you walk out the door you are *fired and finished,* and we can hire new men in your place to take your job." With reference to the duty to negotiate, McCall testified that Hoffman said "the Government requires me to negotiate a contract, and I will negotiate, and negotiate, and negotiate, but no union will get a damn thing from me." He further testified that in discussing the strike at Bottoms-Fiske "he said that they voted in the Union and had bombings and dynamitings and men were out of a job."

With respect to that speech, Hoffman testified that he read from two lengthy letters written to all the employees on October 28 and November 3 but admitted that there was *"some added speech * * * side* comments * * * that came about from comments and questions from the employees." With respect to the duty to bargain, he denied that he said he would "negotiate, negotiate, and negotiate" and testified that he told the employees that if the parties agreed, they would "have a contract or something to that extent." Concerning strikes, he testified that he told the employees that it was his "understanding * * * of the North Carolina Right to Work law * * * that if any employee went on strike [Respondent] had the right to replace him."

I find Hoffman's reference to North Carolina's so-called Right to Work law to be a complete non sequitur. There is nothing in that law (General Statutes of North Carolina, Ch. 95, Sec. 76–84) which has any-

thing to do with the right of employees to engage in a strike, or a loss of employee status for engaging in a strike. Judging by the various stages of illiteracy possessed by most of the more than approximately 100 employees who testified before me,[7] I am convinced that Hoffman's reference to the Right to Work law was intended, and undoubtedly did create the false impression that this law limited their right to strike beyond that possessed by employees in States where there was no such law.

Hoffman admitted that during his talk there was reference to the neighborhood strikes at Bottoms-Fiske and Finch Furniture, that employees "went greatly in debt because of the strikes," and that there had been violence in connection therewith. Though he denied that *he* made these statements and sought to attribute the warnings to some of the employees, he admitted that he "concurred" in those views when they were expressed and that in agreement and approval thereof "motioned [his] head [in affirmation] as they were talking."

On the entire record, and my appraisal of the trustworthiness of the testimony of the employees who testified that he made the statements attributed to him, I find that Hoffman made the threats so ascribed, thereby violating Section 8(a)(1) of the Act. *Bernardin, Inc.*, 153 NLRB No. 91. While much of his speech and most of the contents of the two letters aforementioned which Hoffman testified he repeated, *verbatim* or in substance, during the course of his speech, consisted of legitimate argument against the entry of the Union, the effect of the threats heretofore found compel the conclusion that the overall effect of the speech was "to restrain employees in

[7] Respondent, in its brief, also took note of the "astonishing prevalence of illiteracy among these employees."

the exercise of their right to vote freely by instilling in them a foreboding of damage through loss of employment if the Union were selected" by the employees as their collective-bargaining representative. *Daniel Construction Co., Inc.* v. *N.L.R.B.* 341 F. 2d 805 (C.A. 4); *Louisiana Manufacturing Co.*, 152 NLRB No. 131; *Rice Lake Creamery Co.*, 131 NLRB 1270, 1292; *Reed & Prince Manufacturing Co.*, 96 NLRB 850, 860, enfd. 205 F. 2d 131 (C.A. 1); *Russell-Newman Mfg. Co.*, 153 NLRB No. 105.

D. The refusal to bargain

Following a vigorous campaign to organize Respondent's employees in the spring and summer of 1964, the Union, on August 13, sent a letter to Hoffman, as president of General Steel, received by him on August 14, advising "that a majority of your employees of the High Point, N.C. plant have signed written authorizations designating [the Union] as their collective-bargaining agent for the purpose of representing them on all matters pertaining to wages, hours of work and conditions of employment." The letter further requested voluntary recognition of the Union and that a meeting be arranged for the purpose of negotiating a collective-bargaining agreement. On August 26, counsel for General Steel, by letter, advised the Union that his client did not believe that the Union represented a majority of the employees and would not, therefore, recognize the Union "until or unless it is certified by proper authority." Since that time, Respondent has continued to refuse recognition of, or bargain with, the Union.

In the meantime, on August 14, the Union filed its petition with the Board in Case No. 11–RC–2022 seeking certification as collective-bargaining representative of "all production and maintenance employees at

[General Steel's] factory at High Point, N.C." Following a hearing on that petition, conducted on September 10 by a duly designated Hearing Officer, at which Hoffman, executive vice president of both General Steel and Crown Flex, testified, the Board's Regional Director, on October 6, issued his Decision and Direction of Election finding that General Steel and Crown Flex constitute a single employer within the meaning of the Act. He further directed that an election be conducted among the following employees of both corporations which he found and concluded to be an appropriate unit for the purposes of collective bargaining within the meaning of Section 9(b) of the Act: "All production and maintenance employees at [Respondent's] High Point, North Carolina, plant, excluding office clerical employees, professional employees, guards and supervisors as defined in the Act."

As noted in the Statement of Case, *supra*, General Steel filed with the Board at Washington, D.C., its Request for Review of the aforesaid Decision and Direction of Election urging *only* that the Regional Director "had no authority to enter any order affecting its employees or grouping the employees of General Steel Products, Inc. with those of any other employer not [previously made] a party to the proceeding." On October 28, the Board issued its Order denying the aforesaid Request for Review on the ground that "it raises no substantial issues warranting review."

At the election conducted on November 6, 83 votes were cast for the Union, 94 against that organization, and 13 ballots were challenged. Being of the view that it lost the election because of Respondent's illegal conduct and seeking to set aside its result, the Union filed its Objections to that election which culminated in the Regional Director's Supplemental Decision and Direc-

tion of December 23, further described in Statement of Case, *supra*. The General Counsel now seeks to establish the Union's majority status in the instant proceeding by cards executed by a majority of the employees in the appropriate unit designating the Union as their collective-bargaining representative, and to have Respondent adjudged guilty of an unlawful refusal to bargain as permitted by the Board's rationale in *Bernel Foam Products Co., Inc.*, 146 NLRB 1277, approved by the courts in *International Union of Electrical, Radio and Machine Workers, AFL-CIO* v. *N.L.R.B.*, —— F. 2d —— (C.A.D.C., May 13, 1965, 59 LRRM 2232); *Colson Corporation* v. *N.L.R.B.*, 347 F. 2d 128 (C.A. 8).

Respondent, in its brief, correctly contends that in order to prevail on this theory the General Counsel must prove "all of the following necessary elements: There must be (1) an unequivocal demand for recognition and bargaining (2) in an appropriate unit (3) by a union actually representing a majority of employees in the unit demanded and (4) the employer must have declined in bad faith to extend recognition, having no good-faith doubt of the Union's majority."

With respect to (1) immediately above, Respondent contends that "there was no unequivocal demand for recognition and bargaining." I find nothing equivocal in the Union's demand of August 13 expressly demanding both recognition and the designation of a time and place to begin collective bargaining. Nor is there merit to Respondent's argument that this demand lost its effect by the filing of the Union's petition with the Board on the following day.[8] Equally devoid of merit is the contention that there has been

[8] *United Mine Workers* v. *Arkansas Oak Flooring Co.*, 351 U.S. 62; *N.L.R.B.* v. *Overnite Transportation Co.*, 308 F. 2d 279 (C.A. 4).

no proper demand because the Union's letter of August 13 was addressed only to Hoffman, as president of General Steel, and that no demand has ever been made on Crown Flex. By reason of the Board's Order of October 28 denying Respondent's Request for Review more fully described above, it is now "the law of the case," insofar as I am concerned, that General Steel and Crown Flex constitute a single employer. In that state of the record, the demand of August 13 must be deemed sufficient as to both corporations.

Nor is it fatal to the General Counsel's case that the Union's demand for recognition failed to "define any unit," but merely claimed the right to represent "a majority of your employees of the High Point, N.C. plant." *Within a day or two thereafter,* Respondent received a copy of the Union's petition in Case No. 11–RC–2022 describing the unit for which representation was claimed as follows: "All production and maintenance employees employed at the Employer's factory at High Point, N.C., excluding office clerical employees, guards, professional employees and supervisors as defined in the Act." At the hearing on that petition, *no issue was raised* concerning the description or appropriateness of that unit and it was so found to be by the Regional Director's Decision and Direction of Election. Furthermore, *no question about the unit was raised* by Respondent in its letter of August 26 refusing the Union's request for recognition and bargaining, or in its Request for Review by the Board of the Regional Director's Decision and Direction of Election. On the entire record in this proceeding, as well as the *entire record* in Case No. 11–RC–2022 of which I have taken official notice as requested, I find that the variance between the description of the unit as set forth in the Union's letter of August 13 and that found by the Regional Director

in his Decision of October 6 to be without fatal effect. *Sabine Vending Co., Inc.*, 147 NLRB 1010; *Gotham Shoe Manufacturing Co., Inc.*, 149 NLRB No. 80.

To establish the third necessary element, that the Union actually represented a majority of the employees in the unit, there were received in evidence General Counsel's Exhibit 4 A–B, being lists prepared by Respondent showing the names and "occupations" of 229 persons employed by Crown Flex and General Steel, respectively, during the week ending August 15, 1964.* An analysis of these two lists discloses that they contain the names of 22 persons classified as foremen, clericals, and watchmen, employees not within the unit. I therefore find that on the critical date herein, August 14, the day of the Union's demand for recognition, there were 207 employees in the unit and that 104 would constitute the majority necessary to establish the Union as the collective-bargaining representative of all the employees in the unit.

To establish that majority status, the General Counsel called more than 100 witnesses and offered into evidence 133 cards purporting to bear the signature of that number of employees in the unit, all of the cards being dated prior to or on August 13, and reading as follows:

*These two lists were submitted to the Board's Regional Director by Respondent pursuant to an Order of the United States District Court for the Middle District of North Carolina, requiring Respondent's obedience, theretofore withheld, to the Board's subpoena for "a list of persons employed by it during the week ending August 15, 1964 * * * together with *job classification* of each employee.

Upholsterers International Union
of North America
AFL–CIO

I do hereby designate and authorize the Upholsterers International Union of North America, AFL–CIO, and its representatives to act as my representative for the purpose of collective bargaining in respect to rates of pay, wages, hours of employment and other conditions of employment.

Signed: ---------- ----------
(Name) (Date)

At the hearing, Respondent objected to the introduction into the record of practically all of the 133 cards,[10] principally on the ground that the signers thereof were *either* allegedly told, believed, or led to believe that the cards would be used *only* to get an election. Though I received all of the cards in evidence, I announced that this did not necessarily mean that I thereby deemed them to be valid designation cards for the purpose claimed by the General Counsel, and that my determination of that ultimate issue would be made in this Decision after a careful review of the entire record. Accordingly, and because I did not, during the hearing, fully explicate my reasons for overruling most of Respondent's objections to the receipt in evidence of the cards in question, objections which are again urged upon me by Respondent's brief, I deem it appropriate to here summarize the reasons for those rulings and the rationale for the conclusions that follow with respect to the cards as valid designations of the Union as collective-bargaining representative.

[10] In its brief, Respondent modified its position but still contended that 114 of such cards may not be considered valid designations of the Union by the employees whose signatures appear thereon.

Any analysis of the problem under consideration must begin with due regard for the *unequivocal* nature of the cards. Notwithstanding the clearly stated exclusive purpose of the card as so designated thereon, I am in full agreement with Respondent's contention "that if a man is told in *haec verba* that his card is 'only' for an election or 'just' for an election, then the card cannot be used to obtain recognition in any other manner." *Englewood Lumber Company,* 130 NLRB 394. Where, however, cards are solicited "for the *dual* purpose of (a) petitioning the Board for an election, *and* (b) authorizing the Union to represent the employees as their collective bargaining agent, * * * [the cards are] valid designations of the Union as bargaining representative of the employees." *The Shelby Manufacturing Company,* 155 NLRB No. 39 (November 1, 1965); *Lenz Company,* 153 NLRB No. 120; *S. N. C. Manufacturing Co., Inc.,* 147 NLRB No. 92, enfd. —— F. 2d —— (C.A.D.C., May 13, 1965); *N.L.R.B.* v. *Hyde,* 339 F. 2d 568 (C.A. 9); *N.L.R.B.* v. *Geigy Co.,* 211 F. 2d 553, 556 (C.A. 9); *Winn-Dixie Stores, Inc.,* 143 NLRB 848, enfd. 341 F. 2d 750 (C.A. 6); *Gotham Shoe Manufacturing Co., Inc.,* 149 NLRB No. 80; *N.L.R.B.* v. *Cumberland Shoe Corporation,* —— F. 2d —— (C.A. 6, Oct. 26, 1965).

Oral statements that the union intends to seek an election and intends to use the cards in support of its petition for such election, as distinguished from statements that they will be used *only* or *just* for an election, are not misrepresentations when the union in fact intends to do so. The union solicits signatures on authorization cards such as those here, *either* to request recognition when a majority of employees within the unit have signed, or to obtain a sufficient number of signatures to petition for a Board-con-

ducted election," or to do both. Cf. *N.L.R.B.* v. *Wheland Co.*, 271 F. 2d 122 (C.A. 6); *N.L.R.B.* v. *Geigy Co.*, 211 F. 2d 553, 556 (C.A. 9). It is by no means unusual for a union to seek a Board election, even after a majority of the employees have designated it as collective-bargaining representative. The union may seek such an election, rather than press for recognition, so as to obtain the special statutory benefits conferred upon certified unions. For example, a Board certification normally protects the representative status of the certified union for a minimum of one year, despite actual loss of its majority. See *Ray Brooks* v. *N.L.R.B.*, 348 U.S. 96. Such certification also accords protection to the Union, under Section 8(b)(4)(C) of the Act against raiding by rival unions. Indeed, that the Union herein intended to use the cards for the dual purpose of requesting recognition based on the cards designating it as representative and, if necessary, to secure an election, is amply demonstrated by the fact that on the *very next day* after the Union wrote the Company requesting recognition, it also filed a petition for an election with the Board's Regional Office.

Although solicitors in many cases may have mentioned a use of the cards in order to secure an election, all the cards signed are explicit and unambiguous. Each plainly states that the employee authorizes the Union "to act as my representative for the purpose of collective bargaining in respect to rates of pay, wages,

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[11] In order to free itself from the necessity of conducting elections in which the petitioning union has no substantial likelihood of success, the Board has long held that a union seeking a representation election must demonstrate a showing of interest in union representation by at least 30 percent of the employees involved. See the Board's Rules and Regulations, Section 101.17–101.18; also *N.L.R.B.* v. *J. I. Case Co.*, 201 F. 2d 597, 598–600 (C.A. 9).

hours of employment and other conditions of employment." The language clearly designates the Union as collective-bargaining representative, empowering it to sign a contract with the Employer. The card is devoid of any reference to a Board-conducted election; the word "election" does not even appear on the card. Cf. *Morris and Associates, Inc.*, 138 NLRB 1160, 1164, 1176.

As the court emphasized in *Joy Silk Mills, Inc.* v. *N.L.R.B.*, 185 F. 2d 732, 743 (C.A.D.C.), cert. denied 341 U.S. 914, it has long been held that "[a]n employee's thoughts (or afterthoughts) as to why he signed a union card, and what he thought that card meant, cannot negative the overt action of having signed a card designating a union as bargaining agent." Accord: *N.L.R.B.* v. *Greenfield Components Corp.*, 317 F. 2d 85, 89 (C.A. 1); *N.L.R.B.* v. *Gorbea, Peres & Morrell*, 300 F. 2d 886 (C.A. 1); *Whitelight Products Co.* v. *N.L.R.B.*, 298 F. 2d 12 (C.A. 1) cert. denied 348 U.S. 821; *N.L.R.B.* v. *Stow Mfg. Co.*, 217 F. 2d 900 (C.A. 2) cert. denied 348 U.S. 964; *Dan River Mills, Inc.*, 121 NLRB 648, enforcement denied on other grounds, 274 F. 2d 381 (C.A. 5). This rule is but another application of the principle expressed in *Allied Steel & Conveyers, Inc.* v. *Ford Motor Company*, 277 F. 2d 907, 913, that "[i]n the absence of fraud or willful deceit, one who signs a contract which he has had an opportunity to read and understand, is bound by its provisions." Such a rule is particularly applicable here, since almost all the employees who were asked, testified that they read the authorization card or that it was read to them before they signed it or authorized it to be signed in their behalf. Sound policy supports the application of the rule to union authorization cards. It has long been settled that such cards are an acceptable means of proving a union's

majority (*United Mine Workers* v. *Arkansas Oak Flooring Co.*, 351 U.S. 62, 71-72), and they could hardly serve that office if they were subject to repudiation by testimony as to mental reservations.

At first glance, the distinction between representations that an election is the *sole* purpose of the cards, and representations that an election is *a* purpose may seem a fine one, but the distinction goes to the very basis for the rule. Thus, by stating that the card may or will be used to secure an election, the solicitor neither contradicts the plain statement on the card nor misstates the Union's actual intention. As the Board observed in *Cumberland Shoe Corporation*, 144 NLRB 1268, "[t]he failure of the union solicitors to affirmatively restate [the authorization contained in the card] does not indicate that it was abandoned or ignored."

Seeking to completely vitiate the unequivocal effect of the cards, counsel for Respondent, on cross-examination of most of the card-signers, sought to ascertain *only* whether they were told that their card would be kept secret, confidential, or shown only to the Board. Being of the view that a line of inquiry, so *limited*, has no relevance in the determination of the *purpose* for which the card was signed, I sustained the General Counsel's objection thereto.[12] Accordingly, I reject Respondent's contention "that if a man is told that his card will be secret, or will be shown only to the Labor Board for the purpose of obtaining election, that *this* is the *absolute equivalent* of telling him that it will be used *'only'* for purposes of obtaining an election." [Emphasis supplied.]

With the foregoing principles in mind, we turn next to a consideration of the entire record to de-

[12] This is not to say that such a line of inquiry would be irrelevant if the employee was *also expressly* told that the card would be used *only* or *just* for an election.

termine whether the cards upon which the General Counsel relies are valid designations of the Union as collective-bargaining representative. Respondent, in its brief, now concedes that cards of the 19 employees named in the attached Appendix A may be used and relied on for that purpose. With respect to the remainder of the cards, Respondent's exhaustive brief succinctly summarizes the testimony pertaining to each card and which testimony, it contends, bars or forecloses use of that card as a valid designation of the Union by the person whose signature appears thereon.

With respect to the 97 employees named in the attached Appendix B Respondent in its brief contends, in substance, that their cards should be rejected because each of these employees was told *one or more* of the following: (1) that the card would be used to get an election (2) that he had the right to vote either way, even though he signed the card (3) that the card would be kept secret and not shown to anybody except to the Board in order to get an election. For reasons heretofore explicated, I conclude that these statements, singly or jointly, do not foreclose use of the cards for the purpose designated on their face. *Lenz Company, supra; S. N. C. Manufacturing Co., Inc., supra; N.L.R.B.* v. *Hyde, supra; N.L.R.B.* v. *Geigy Co., supra; Winn-Dixie Stores, supra; Gotham Shoe Manufacturing Co., Inc., supra; N.L.R.B.* v. *Cumberland Shoe Corporation, supra.* All of these cards were read by or to each signer thereof, and were signed by or in behalf of each person whose signature appears thereon.

In arriving at my ultimate conclusion with respect to these cards, I have not been unmindful of an additional factor upon which Respondent relies with respect to at least 17 card signers as being either

"a complete illiterate," "semi-literate," or that it "was not shown * * * that this man had sufficient understanding of what he was doing." While the varying stages of illiteracy of all the employees has been considered by me in appraising its impact on the representations described in (1), (2), and (3) of the preceding paragraph, consideration of *all* the testimony pertaining to the circumstances under which the signatures were obtained convinces me that by affixing or authorizing their signature to the card all of these employees not only intended, but were fully aware, that they were thereby designating the Union as their representative. Based on their testimony and that of the witnesses who procured their signature, concerning which more will be said later, I find and conclude that the cards of the 97 employees named in Appendix B are valid designations of the Union as their collective-bargaining representative.

An additional ground relied on by Respondent for rejection of the cards of at least two employees named in Appendix B, Edward Laws 6(a)(42) and Charlie Oakley 6(a)(66), is that these employees were told, in substance, that if they waited to join the Union until after its election, they would be required to pay an initiation fee. I find no merit to this contention. "Waiving of fees during the organizational period does not smack of coercion but rather of promotional persuasion." *N.L.R.B.* v. *I. Taitel & Son*, 261 F. 2d 1 (C.A. 7), enfg. 119 NLRB 910, cert. denied 368 U.S. 938; see also *Amalgamated Clothing Workers* v. *N.L.R.B.*, 345 F. 2d 264 (C.A. 2); *N.L.R.B.* v. *Gorbea, Perez & Morell, supra; Peoples Service Drug Stores, Inc.*, 154 NLRB No. 118 (Sept. 24, 1965).

During the hearing, and throughout its brief, Respondent also repeatedly objected to reliance upon the cards for the purpose expressed therein on the

ground that the testimony pertaining to the date of execution thereof was not sufficiently established. While it is true that a number of employees, testifying approximately nine months or more after the event, were uncertain as to the exact date their signatures were subscribed or affixed to their cards, the testimony is undisputed that all of the cards offered in evidence and relied on by the General Counsel, except that of Wilma Bryant 6(a)(12),[12] were filed by the Union with the Board's Regional Office at about 10:30 a.m. of August 14, 1964, and bear the Regional Office stamp of that time and date. I therefore find that all of these cards were executed prior to that date. *Combined Metal Manufacturing Co.*, 123 NLRB 895; *Cameo Lingerie, Inc.*, 148 NLRB No. 60; *I. Taitel & Son, supra.*

Respondent also urges that the card of John W. McCarter 6(a)(79) be rejected because it is dated July 6, 1964, whereas "he did not go to work for the employer until July 8, 1964." No contention is made, however, that he was not employed by Respondent on August 14, the date of the Union's demand for recognition. It seems reasonable to infer and conclude that on or before July 6, McCarter had already made arrangements for employment by Respondent and signed the card in anticipation of that employment. On the record made here, and there being no contention that McCarter revoked his designation either prior to or

[12] Though Bryant could not recall the date she signed her card, it is dated Sunday, August 9, 1964, and there is no evidence that this was not the date of execution. Brown testified that on August 10, he was advised by Ethel Jenkins (Jennings) that she had Bryant's signed card in her possession. Because he knew that the Union already had a majority of the employees signed up, he did not pick up Bryant's card until later.

after July 8, I see no reason to reject his appointment of the Union.

The card of Jack Rozier 6(a)(76) is also attacked by Respondent, apparently on the ground that it was not delivered by Rozier to anyone for use as his designation of the Union. His card, dated July 29, 1964, was first received in evidence on the testimony of Bobby Lloyd, who testified that while sitting next to Rozier at a Union meeting, he not only saw him sign this card but also "saw him when he turned it in." Rozier later testified that he signed and "filled out" the card in question but claimed that he did so in his car in the parking lot at the mill, following which he drove to his home and left the card on the car seat. He further testified that he never saw the card again until "just now," at the hearing, that he left the signed card on the car seat because he "wanted to think about it more before [he] turned it in, or before [he] authorized them to represent [him]." I credit the testimony of Bobby Lloyd that Rozier signed his card at the Union meeting and "turned it in" at that time, not only because Lloyd impressed me as a trustworthy witness, but because of the fantastic tale offered by Rozier to explain the presence of the card in the hearing room—that he "could have knocked it out and somebody could have gotten it out of the car, * * * I just left it laying on the seat." Not only is this explanation so highly improbable, but Rozier's demeanor while testifying inspired no confidence in the trustworthiness of his testimony and leaves me no alternative other than to reject that testmony.

There remain for consideration the cards of the six employees named in Appendix C who were told, *inter alia*, that the cards would be used only, or just, for an election. In his endeavor to establish that this was represented to be the only purpose of the cards, coun-

sel for Respondent, on *voir dire* examination of a number of card signers, elicited testimony to that effect by means of leading questions. Though I am mindful that leading questions are generally permitted in the cross-examination of witnesses, I am not here persuaded that an affirmative answer so induced, by *itself* and without regard for the remainder of the record, has sufficient probative weight "to controvert the statement of the purpose and effect of [the] cards contained on the face thereof." *Cumberland Shoe Corporation,* 144 NLRB 1268, fn. 3, as amended by the Board's Order issued January 13, 1964, of which I have taken official notice, and which Order was enforced —— F. 2d —— (C.A. 6, October 26, 1965). In evaluating such suggested testimony, consideration must be given to the testimony of that witness *as a whole.* Here too, however, as in the case of the employees described in Appendix B, appraisal of such testimony cannot ignore the varying stage of illiteracy of the witnesses involved and the degree of their sophistication or lack thereof. Though entitled to consideration, I do not deem the affirmative answer of employees given in response to such leading questions as decisive or conclusive where such answers are in conflict or irreconcilable with either the rest of the testimony of such employees and/or of credible evidence negating the testimony so adduced.

Among the instances illustrative of the unreliability of testimony so elicited, is the testimony of Curtis Benson 6(a)(89). One of the first questions asked of him by Respondent's counsel, on *voir dire* examination, was whether Larry Robinson, who gave him the card, told him "that the purpose of the card was just to get an election in the plant." Benson replied: "Yes, he did." When he was then asked by the General Counsel to tell "exactly" what Robinson said when he gave

him the card, Benson testified: "I couldn't tell you exactly what was said; it has been quite a while back; he mentioned the union to me before he gave me the card." Upon being urged by me to do the "best" he could to relate "*everything* that was said at that time," he testified as follows: "Well, he brought the subject up and he asked me was I interested in it; and I asked him to tell me more about it; and he said to sign the card *that I would be signing that I wanted the union to represent me with the Company;* and it sounded right good to me; and so I signed it." He was next asked specifically, whether he could "remember anything else that was said" and he replied that he could not. Robinson, who appeared as a witness a day earlier, testified that he gave Benson the card and "told him that it was a union authorization card for the union to represent him, * * * gave him this card for him to read, and he read it aloud, and filled out the card, and signed his name," and gave it back to Robinson.

Wilma Bryant 6(a)(12), who testified that she read and signed the card, was then asked on *voir dire* examination by Respondent's counsel not what she was told by Mrs. Jennings (Jenkins) who solicited the signature, but whether she was told "that these cards were being signed up just for the purpose of getting an election" and her answer was: "Yes, sir." The General Counsel then asked Bryant to relate "exactly" what she was told and she testified as follows: "She said it would be better to have a union where we worked at," that this was "all that was said [and that she could not] remember anything else about the conversation." Respondent's counsel then asked Bryant whether it was Jennings (Jenkins) "or someone else that told [her] that these cards were just to get an election," to which Bryant replied:

"She is the one." Expressing confusion concerning her testimony and its apparent inconsistency, I asked Bryant to "tell me again what was said" and she testified as follows: "Well, she handed me the card, and I said 'well, I don't know,' and she said, 'if you sign, it would be better to have a union where we work,' and I said 'I will think about it' and then I said 'I will sign a card.'" I next asked her whether there was "was anything said at that time about an election" and she testified that Jennings (Jenkins) "said it was better to have a union where we worked at, *that is all she said.*" When I then inquired whether "nothing was said about an election at that time," she testified: "No, that is all that was said." Counsel for Respondent again asked whether it was "then or at some other time that [she was] told that these cards were just for the purpose of getting an election" and she replied: "She handed me the card and told me that it would be better to have a union where we worked and I told her I didn't know, and she said 'Think about it,' and I did. I signed the card."

Of a similar nature was the testimony of Jerry L. Furr 6(a)(103), who acted as Respondent's observer at the election. After testifying that he read, signed, and filled out the remainder of his card at the request of Ted Davis, the Union's International representative, Furr was suggestively asked by Respondent's counsel whether Davis told him "that the purpose of getting the card signed was just to get an election in the plant," and he replied: "Yes." When pressed by the General Counsel to tell *all* that he remembered of the conversion with Davis, he testified: "Well, we sat there at the kitchen table; and anyway he asked me did I think would a union help; or something like that, I don't know how it went; I don't even remember; but I know he just asked me would I sign

a card, did I want to sign a card; and at that time I said I would; he said they were getting cards to get *an* election at the plant."

James Benson 6(a)(9) also testified that at the request of Davis and Napolean Brown, another International representative of the Union, he signed the card designating the Union as his bargaining representative. On *voir dire* examination by Respondent's counsel, Benson was asked to repeat the conversation he then had with Davis and Brown and testified as follows: "They said that they were going to represent the Union, they wished us to sign a card so that they could have an election." Respondent's counsel next asked whether the two men told him "that the cards were just to get an election" and Benson replied: "Yes, sir." Upon further examination by the General Counsel, however, Benson admitted that in an affidavit previously given to the General Counsel he swore that he "was *not* told that [he] was signing a card *just* to get an election." He further testified that this affidavit "is correct * * * and true." Respondent's counsel again asked whether the two representatives told him "that signing this card was just to get an election" and Benson again replied affirmatively. I then asked him to tell "in [his] own words what was said" and he testified: "Well, they came to the house, and said that they were representing the Union, and if I wanted to sign a card, I don't know what else, because they said they would have an election." And that they did not "say anything else" in the 3-5 minutes they were there.

Though H. C. McMurray 6(c) and Samuel Snow 6(k) were not allowed to answer Respondent Counsel's question whether they were told that the only

purpose of the card was to get an election, both testified they "signed the card to get the Union in."[14]

In appraising the effect to be given to the suggestive testimony described above, consideration must also be given to the testimony of Davis and Brown who are accused of making practically all of the alleged fatal misrepresentations. Though Davis admitted that in the solicitation of signed cards mention was made to some of the employees of *a* possible use of the cards to secure an election, and/or that their cards would be kept confidential and not shown to their *foremen,* both men unequivocally denied that they ever told any employee that the card would be used *only* or *just* for an election. Davis and Brown, by their testimony and demeanor, impressed me as being most worthy of belief and I credit their denials of the alleged misrepresentation. By doing so, I do not accuse the employees who testified contrariwise of having offered false testimony wilfully. Consideration of all their testimony, their degree of illiteracy and lack of sophistication, convinces me that their affirmative answers to the leading questions under consideration were unwittingly uttered, and constituted their own erroneous conclusions derived from the statements of the Union representatives. However, such conclusions, "thoughts (or afterthoughts) as to why [they] signed a union card and what [they] thought the card meant, cannot negative the overt action of having signed a

[14] Though on several occasions I sustained the General Counsel's objections to leading questions suggesting that other employees were told that the only purpose of the cards was to secure an election, for purpose of decision herein, I will assume that these other employees, if permitted to testify, would have responded affirmatively. I have not, however, relied on the cards of any of these other employees in my determination of the Union's majority status. My ultimate conclusion that the Union *otherwise* achieved that status remains the same.

card designating a union as bargaining agent." *Joy Silk Mills, Inc.* v. *N.L.R.B.*, *supra*; *Colson Corporation* v. *N.L.R.B.*, 347 F. 2d 128, 135 (C.A. 8). By reason of all the foregoing, I find and conclude that the cards of the above-mentioned six employees, named in Appendix C, are valid designations of the Union as their collective-bargaining representative.

Having found that there were 207 employees in the bargaining unit on August 14, when the Union made its demand to bargain, and that the 122 employees named in Appendixes A, B, and C, had prior thereto validly designated the Union as their collective-bargaining representative, I further find and conclude that on the day aforementioned the Union was the duly selected bargaining representative of all the employees in the unit described in the Regional Director's Decision and Direction of Election of October 6.[15]

Turning now to the question of whether Respondent's refusal to bargain with the Union on and after August 14 was occasioned by its alleged good-faith doubt that the Union in fact represented a majority of the employees, Respondent concedes that as was its legal right, it was opposed to the entry of the Union in its plants as collective-bargaining representative of its employees.

Following receipt of the Union's demand on August 14, Hoffman called a meeting of his foremen on Monday, August 17, at which he informed them of the Union's letter. He testified that he asked them "how they felt about the employees as to whether they wanted a union to represent them or not and * * *

[15] The Union's status having been established by a substantial number exceeding the necessary majority of 104, I find it unnecessary to extend this Decision by a consideration of the remaining cards in the record, none of which have been relied on by me in finding the Union's majority status.

they said they didn't know." He then asked them to "try to find out in their department [whether] the majority wanted the Union to represent them," but *not to "interrogate the people* or in any way to threaten them." Foreman Rigsbee, testifying in behalf of Respondent, testified Hoffman *specifically* told the foreman "not to ask [the employees] if they had signed a union card."

Between that day and August 26, at meetings with his foremen, Hoffman received their "*opinions* as to how *they felt* their department stood" which, coupled with his own personal interviews or conversations with 8–10 employees, brought him to the conclusion that about 30 percent of the employees wanted the Union to represent them and about 70 percent did not. He then instructed his attorney to write the letter of August 26 declining recognition of the Union.

"By its very nature, the issue of whether an employer has questioned a union's majority in good faith cannot be resolved by resort to any simple formula. It can only be answered in the light of the totality of all the circumstances involved in a particular case. But among such circumstances, two factors would seem to be essential prerequisites to any finding that the employer raised the majority issue in good faith * * *. There must, first of all, have been some reasonable grounds for believing that the Union had [never achieved majority status]. And, secondly, the majority issue must *not* have been raised by the employer in a context of illegal anti-union activities, or other conduct by the employer aimed at causing disaffection from the union or indicating that in raising the majority issue the employer was merely seeking to gain time in which to undermine the union." *Celanese Corporation of America*, 95 NLRB 664, 673; *Joy Silk Mills, Inc.*, 85 NLRB 1263, enfd. as modified

on other grounds, 185 F. 2d 752 (C.A.D.C.), cert. denied 341 U.S. 914.

Because the record herein abundantly establishes that Respondent has raised the majority issue "in a context of illegal anti-union activities," I find it unnecessary to engage in any lengthy analysis of the testimony of Respondent's foremen upon which Hoffman allegedly relied in arriving at his conclusion that 70 percent of the employees were opposed to the Union. Were I required to do so, I would unhesitatingly find that the reports of the six foremen who testified that they reported to Hoffman, *and especially their testimony relating to the basis for their reports*, are so lacking in probative weight that neither they, nor Hoffman, had "*reasonable* grounds for believing" that the Union had not been designated by a majority of the employees." "A showing of such doubt * * * requires more than an employer's mere assertion of it and more than proof of the employer's subjective state of mind. The assertion must be supported by objective considerations. The applicable test, as defined in the *Celanese* case, is whether or not the objective facts furnish a 'reasonable basis' for the asserted doubt." *Laystrom Mfg. Co.*, 151 NLRB No. 144.

Here, "There is * * * affirmative evidence showing Respondent to have engaged in the unfair labor practices detailed above after the Union's request to bargain, whose foreseeable consequence was the destruction of the Union's majority status. It is, therefore, not surprising that the majority which the Union clearly possessed on [August 14] when it first demanded recognition, should have been subsequently

[16] Six other foremen employed during the week ending August 15 did not testify. These six foremen had charge of 93 employees.

lost. That such loss was attributable to the Respondent's unfair labor practice is clear. *Master Transmission Rebuilding Corporation & Master Parts, Inc.*, 155 NLRB No. 35 (October 28, 1965). By thus destroying the Union's majority, Respondent interfered with, restrained, and coerced its employees in the exercise of rights guaranteed in Section 7 of the Act, thereby violating Section 8(a)(1) thereof. By refusing the Union's demand to bargain on and after August 14, Respondent also violated Section 8(a)(5) of the Act. Under either section of the Act, effectuation of the policies and purposes of the Act requires the issuance of a bargaining order as part of the remedy necessary to remedy the violations found herein.

Report and Recommendations in Case No. 11–RC–2022.

In accordance with the Regional Director's Supplemental Decision and Direction, and the Board's Rules and Regulations, Series 8, as amended, I find no substantial, credible evidence in the record to sustain the following Union Objections to conduct affecting the results of the election: Objections Nos. 1, 8, and 9. With respect to Objections 4, 6, "and other acts and conduct," I find that Respondent was guilty of the conduct complained of therein to the extent set forth in Section IIIA, (6), (7), (8), and (9), *supra*. Concerning Objections Nos. 5 and 6, I find, as set forth in Section IIIB, and IIIC, *supra*, that the posted notice referred to in Objection No. 5 and the speech referred to in Objection No. 6 were violative of Section 8(a)(1) of the Act. Accordingly, I recommend that Objections Nos. 4, 5, and 6 be sustained to the extent indicated above and that the election of November 6, 1964, be set aside.

Upon the entire record in this consolidated proceeding, I make the following:

Conclusions of Law

1. By interrogating and threatening employees concerning their union membership or activities, Respondent engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and Section 2 (6) and (7) of the Act.

2. All production and maintenance employees employed by General Steel Products, Inc., and Crown Flex of North Carolina, Inc., at their High Point, North Carolina, location, excluding office clerical employees, guards, professional employees and supervisors as defined in the Act, constitute an appropriate bargaining unit.

3. By refusing to recognize and bargain with the Union, the duly designated collective-bargaining representative of its employees, Respondent has engaged in an unfair labor practice affecting commerce within the meaning of Section 8(a) (5) and (1) and Section 2 (6) and (7) of the Act.

The Remedy

I recommend the issuance of an Order directing Respondent to cease and desist from engaging in the conduct herein found to be violative of the Act and affirmatively, upon request, to bargain with the Union as the exclusive representative of all employees in the above-described appropriate unit, and to post appropriate notices.

According, upon the foregoing findings of fact and conclusions of law, and on the entire record herein, I recommend, pursuant to Section 10(c) of the Act, issuance of the following:

320-064——68——14

ORDER

Respondents General Steel Products, Inc., and Crown Flex of North Carolina, Inc., their officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain with Upholsterers International Union of North America, AFL–CIO, as the exclusive representative of the employees in the following appropriate unit:

> All production and maintenance employees employed by General Steel Products, Inc., and Crown Flex of North Carolina, Inc., at High Point, North Carolina, excluding office clerical employees, guards, professional employees and supervisors as defined in the Act.

(b) Interrogating employees with respect to their union membership or activities in a manner violative of Section 8(a)(1) of the Act.

(c) Threatening employees with reprisals if they designate the Union as their collective-bargaining representative.

(d) In any other manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed in Section 7 of the Act.

2. Take the following affirmative action which I find to be necessary to effectuate the policies of the Act:

(a) Upon request, bargain collectively with the above-named Union as the exclusive representative of all employees in the above-described appropriate unit, and embody in a signed agreement any understanding reached.

(b) Post at their plants at High Point, North Carolina, copies of the notice hereto attached and marked

"Appendix D."[17] Copies of such notice to be furnished by the Regional Director for the Eleventh Region, shall, after being signed by the authorized representative of Respondent, be posted immediately upon receipt thereof, and be maintained by them for a period of 60 consecutive days thereafter in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that such notices are not altered, defaced, or covered by any other material.

(c) Notify the said Regional Director in writing within 20 days from the date of the receipt of this Decision what steps the Respondent has taken to comply herewith.[18]

Dated at Washington, D.C.

DAVID LONDON,
Trial Examiner.

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[17] If these Recommendations are adopted by the Board, the words "A DECISION AND ORDER" shall be substituted for the words "THE RECOMMENDATIONS OF A TRIAL EXAMINER" in the notice. If the Board's Order is enforced by a decree of a United States Court of Appeals, the notice will be further amended by the substitution of the words "A DECREE OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER" for the words "A DECISION AND ORDER."

[18] If these Recommendations are adopted by the Board, this provision shall be modified to read: "Notify the Regional Director for the Eleventh Region, in writing within 10 days from the date of this Order, what steps the Respondent has taken to comply herewith."

APPENDIX A

Name and General Counsel's Exhibit Number	
Mary Jo Simmons	6(w).
James B. Taylor	6(a)(2).
Jean Bodiford	6(a)(10).
Bobby Aleshire	6(a)(23).
Carrie G. Proctor	6(a)(27).
Clarence J. Jones	6(a)(34).
Robert C. Howell, Jr	6(a)(35).
John Loftis	6(a)(38).
Walter Lucas	6(a)(39).
Ralph William Mabe	6(a)(41).
A. T. Ragen	6(a)(52).
Brady Rosse	6(a)(56).
David Wayne Williams	6(a)(63).
Robert Pritchard	6(a)(69).
Bobby Lloyd	6(a)(75).
Johnny Gibson	6(a)(78).
George Harold Orr	6(a)(81).
Larry W. Robinson	6(a)(86).
George W. O'Ham	6(a)(90).

APPENDIX B

Name and General Counsel's Exhibit Number	
Haywood Earl Peterson	6(a).
Douglas Ray Beeson	6(b).
Billy Hooker	6(d).
James R. Hutchins	6(e).
Wayne McCall	6(g).
James Morgan	6(h).
James Howard Byrd	6(i).
W. Donald Jacobs	6(j).
Thomas M. Slate	6(l).
Billy Don Brown	6(m).
W. L. Chrisley	6(n).
Jonah C. Gates	6(p).
Norman Smith	6(q).
John LeRoy Jacobs	6(s).
Roy Gilliland	6(t).
Emanuel J. Mashburn	6(u).

Name and General Counsel's Exhibit Number	
Albert J. Taylor	6(v).
William D. Moss	6(x).
Eugene Heaton	6(z).
James Bodiford	6(a)(3).
Dale Jacobs	6(a)(4).
Walter Aleshire	6(a)(5).
Joseph Allen	6(a)(6).
Dwight Barlow	6(a)(8).
Murray Brim	6(a)(11).
Teddy Bullard	6(a)(13).
James R. Carlyle	6(a)(14).
Nathan Carter	6(a)(15).
Helen Causey	6(a)(16).
Lowell T. Caruthers	6(a)(17).
Roger Dale Deece	6(a)(18).
Gurney Heywood Diamond	6(a)(19).
Joe Dills	6(a)(20).
C. J. Edwards	6(a)(21).
Ralph Black	6(a)(22).
Rex Hugh Fitch	6(a)(24).
Bobby Fulp	6(a)(25).
Joe Hedrick	6(a)(26).
Walter J. Holder	6(a)(28).
John H. Holmes	6(a)(29).
Jesse F. Gibbs	6(a)(30).
Cecil Taylor	6(a)(31).
J. P. Shannahan	6(a)(32).
Richard Walker	6(a)(33).
Howard Thomas Hunt	6(a)(36).
Paul Livingstone	6(a)(37).
Alton B. Maness	6(a)(40).
Edward Earl Laws	6(a)(42).
Custer Franklin Laws	6(a)(43).
Charles Eugene Laws	6(a)(44).
Zeb Laws, Jr	6(a)(45).
J. E. Mishoe	6(a)(46).
Lloyd D. Mishoe	6(a)(47).
James D. Moncus	6(a)(48).
Carson W. Norris	6(a)(49).
James L. Randall	6(a)(50).

Name and General Counsel's Exhibit Number	
Billy J. Searcy	6(a)(51).
Irvin Reagan	6(a)(53).
Larry Leon Robinson	6(a)(54).
Terry Roberson	6(a)(55).
Douglas J. Shipp	6(a)(57).
Odell Strickland	6(a)(58).
Lonnie Teal	6(a)(59).
Henry Thompson	6(a)(60).
Rosier Watts	6(a)(61).
Rabon Wolford	6(a)(64).
James Richard Smith	6(a)(65).
Charlies Oakley	6(a)(66).
Theron B. Williamson	6(a)(67).
William W. Duggins	6(a)(68).
Raymond Clark	6(a)(70).
Roy Junior Scearce	6(a)(71).
Franklin Small	6(a)(72).
Jimmy Parker	6(a)(73).
Tony Parker	6(a)(74).
Jack Rozier	6(a)(76).
Paul Widner	6(a)(77).
John Wesley McCarter	6(a)(79).
Jimmy Monroe	6(a)(83).
Claude Mitchem	6(a)(84).
Floyd Douglas Coe	6(a)(87).
Dan T. Coe	6(a)(88).
Kelly Smith	6(a)(91).
William Ward	6(a)(92).
Thomas Ray Haire	6(a)(93).
Billy Jack Fowler	6(a)(95).
Curtis White	6(a)(96).
Willie Shores	6(a)(97).
James Robinson	6(a)(98).
Charles Robinson	6(a)(99).
Gordon Shuffler	6(a)(100).
John Lee Swaney	6(a)(101).
Frank Swink	6(a)(102).
Lenora Bryant	6(a)(104).
Lynch Whitmire	6(a)(105).
Elmer Cornett	6(a)(106).
William Billings	6(a)(107).

Appendix C

Name and General Counsel's Exhibit Number	
Curtis Benson	6(a)(89).
Wilma Bryant	6(a)(12).
Jerry L. Furr	6(a)(103).
James A. Benson	6(a)(9).
H. C. McMurray	6(c).
Samuel Snow	6(k).

APPENDIX D

NOTICE TO ALL EMPLOYEES

Pursuant to the Recommendations of a trial examiner
of the
NATIONAL LABOR RELATIONS BOARD
and in order to effectuate the policies of the
NATIONAL LABOR RELATIONS ACT

we hereby notify our employees that:

WE WILL upon request, bargain with UPHOLSTERERS' INTERNATIONAL UNION OF NORTH AMERICA, AFL–CIO, as the exclusive representative of our production maintenance employees.

WE WILL NOT interrogate our employees as to their union membership or activity in a manner violative of Section 8(a)(1) of the Act.

WE WILL NOT threaten our employees with economic reprisals for union activity or for designating the above-named union as their collective-bargaining representative.

WE WILL NOT in any other manner interfere with, restrain, or coerce our employees in the exercise of their right to join or assist a union, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for mutual aid or protection.

GENERAL STEEL PRODUCTS, INC., AND CROWN FLEX OF NORTH CAROLINA INC.

Employer.

Dated: _____ By: _____
(Representative) (Title)

This notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced, or covered by any other material.

If employees have any question concerning this notice or compliance with its provisions, they may communicate with the Board's Regional Office, 1831 Nissen Building, 310 West Fourth Street, Winston-Salem, North Carolina 27101 (Tel. No. 723-2302).

APPENDIX J

The relevant provisions of the National Labor Relations Act, as amended (61 Stat. 136, 73 Stat. 519, 29 U.S.C. Secs. 151, *et seq.*) are as follows:

> Sec. 8(a) It shall be an unfair labor practice for an employer—
>
> (1) to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7;
>
> * * * * *
>
> (3) by discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization: * * *
>
> * * * * *
>
> (5) to refuse to bargain collectively with the representatives of his employees, subject to the provisions of section 9(a).
>
> * * * * *
>
> Sec. 9(a) Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment: * * *
>
> * * * * *
>
> (c)(1) Whenever a petition shall have been filed, in accordance with such regulations as may be prescribed by the Board—

(A) by an employee or group of employees or any individual or labor organization acting in their behalf alleging that a substantial number of employees (i) wish to be represented for collective bargaining and that their employer declines to recognize their representative as the representative defined in section 9(a), or (ii) assert that the individual or labor organization, which has been certified or is being currently recognized by their employer as the bargaining representative, is no longer a representative as defined in section 9(a); or

(B) by an employer, alleging that one or more individuals or labor organizations have presented to him a claim to be recognized as the representative defined in section 9(a);

the Board shall investigate such petition and if it has reasonable cause to believe that a question of representation affecting commerce exists shall provide for an appropriate hearing upon due notice. Such hearing may be conducted by an officer or employee of the regional office, who shall not make any recommendations with respect thereto. If the Board finds upon the record of such hearing that such a question of representation exists, it shall direct an election by secret ballot and shall certify the results thereof.